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MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW

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MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW

BY

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✠JOHN CARDINAL FARLEY,
Archbishop of New York.

New York, September 23, 1918.

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INTRODUCTION

In the surety that a worthy and useful work is herewith offered to Catholic readers, I authorize and gladly recommend the publication of Dr. Ayrinhac's "Marriage Legislation in the New Code of Canon Law." Coming from the pen of one whose equipment combines a technical training at Rome with the growth of twenty-five years of experience in classwork and with the opportunities incident to the function of Vindex Vinculi in our Metropolitan Court, it bears the marks of an authority that professors in the seminary and officials of the chancery will readily recognize and appreciate.

It comes, too, at an opportune moment. Tragic events of to-day, the bitter fruit of four centuries of lax thinking among non-Catholic schoolmen and proportionately lax living among their disciples, have shown that the ethical order must be refashioned in the ancient Christian pattern if the race of men is to sustain itself even physically, the more so if there is to be real moral advancement. The world will not come back to Christ, nor be made subject to His reign by any influence the world itself may initiate; the impulse must be from without—the force must come from above. The Church of Christ, which is not of this world, must bring from on high the heavenly grace that will heal the nations. Her mission is to teach, her remedy for the world's distemper is primarily the imparting of the form of sound words which she has heard in faith, for only to minds that know God and His ways can exhortation to righteousness be addressed. In proclaiming anew the system of law whereby her visible life has been erected and directed through the centuries, she inculcates forcibly the notion of moral obligation; she appears before the world as the arbiter of man's conscience, the custodian and interpreter of the "shalt" and "shalt not" of right reason; for she is well aware that knowledge is the first step in the way of salvation, and she takes the step bravely, saying with the voice of authority: *Hoc fac et vives.*

If ever men felt the need of such knowledge, of such secure informing of their minds in the right notion of law, they feel it now, when false science and the lawless devices of science are bringing the ruins of civilization crashing at their feet. The sacred institution of marriage has not been spared in the widespread catastrophe. The assault upon its laws, whether in academic literature or civil code, or popular story, has brought the inevitable reaction, and people think lightly or not at all of the bond that binds husband and wife with an eternal and divine sanction. Practical disregard of the moral law has wrought in modern paganism exactly the same paradox and absurdity that marked the culture of those ancients who changed the truth of God into a lie; their foolish heart is darkened; they serve the creature rather than the Creator.

Because the present work sets forth boldly the notion of Christian matrimonial law, it comes as a thing of blessing. The author has given succinctly but clearly the several stages traversed by the canons of the Church as they grew to the fulness of form and content in which the Codex now presents them. Throughout, the concept of marriage as a natural legal institution sanctified in the grace of Christ and protected in its sacred character by the enactments of Popes and Councils, is ably delineated and, where necessary, defended. To the exposition of the several canons Dr. Ayrinhac has brought a wide erudition and a competent practical experience that will make his book invaluable to the clergy in parish work, as well as to the professor and student in the seminary. We pray upon it ardently the blessings that befit so high an effort in the cause of Christian truth and Christian law.

✠EDWARD J. HANNA,
Archbishop of San Francisco.

October 4, 1918.

FOREWORD

Canonists will, no doubt, give us, before long, scientific commentaries on the New Code of Canon Law. Meanwhile, it was thought that a brief explanation, incomplete and fragmentary though it be, of that part of the Code which concerns the sacrament of marriage might be of some service to the busy parish clergy who have to apply the law without delay.

The changes in the matrimonial legislation, although not very numerous, are of real, practical importance; and, in spite of the efforts made by the legislator to avoid obscurity or indefiniteness, the interpretation and application of a new law is never without some difficulties. The following pages are published in the hope of being of some assistance in that work.

The text itself of the law is here given in the original, in order that every one may study it for himself and refer to it as to the only authoritative norm.

An English translation is added for the benefit of possible readers who might not be familiar with Church Latin.

In the explanations some stress is laid on the historical development of the legislation to show the continuity of the Church's discipline under accidental changes. It helps also to determine the meaning of the new law, to understand its real spirit, and to see how it differs from the old one. Those differences are pointed out briefly without entering into details which all students of Catholic theology are acquainted with or which can easily be found in the familiar text-books.

There will soon be decisions of Roman Congregations in answer to questions proposed or difficulties submitted to them. Some of the interpretations or conclusions adopted here may have to be modified. Although not without solid foundation, as it seems, they can, under the circumstances, be only of a provisional character.

SOURCES:

Codex Juris Canonici.
Corpus Juris Canonici.
Acta Apostolicæ Sedis.
Acta Sanctæ Sedis.
Bullarium Romanum, Taurinensis editio, 1858—1871.
Collectanea S. Congregationis de Propaganda Fide, Romæ, 1893—1907.
Sacrosancta Concilia ad regiam editionem exacta, studio Philippi Labbei et Gabrielis Cossartii, Lutetiæ Parisiorum, 1671.
Histoire des Conciles, C. J. Hefele. Nouvelle traduction par Dom H. Leclerq. Paris, 1907-1917.

AUTHORS PRINCIPALLY CONSULTED:

P. Gasparri, Tractatus Canonicus de Matrimonio. Paris, 1891.
F. X. Wernz, S.J., Jus Decretalium, Tom. IV; Jus Matrimoniale Ecclesiæ Catholicæ. Prati, 1911.

De Smet, Betrothment and Marriage. Bruges, 1912.

Ad. Tanquerey, S. S., Synopsis Theologiæ Moralis et Pastoralis, T. III (A). Tournai, 1907.

J. De Becker, De Sponsalibus et Matrimonio. Louvain, 1913.

A. Esmein, Le Mariage en droit Canonique. Paris, 1891.

Periodicals:

Nouvelle Revue Théologique, Paris-Tournai.

Le Canoniste Contemporain, Paris.

Il Monitore Ecclesiastico, Roma.

The Ecclesiastical Review, Philadelphia.

The Irish Theological Quarterly, Dublin.

A more complete bibliography will be found in the works of Wernz, De Smet, etc.

Marriage Legislation in the New Code of Canon Law: Place and Division

The legislation on marriage in the New Code of Canon Law is found in the third book, which treats of ecclesiastical things, *De Rebus,* and is divided into six parts, dealing with the Sacraments, with Sacred Times and Places, Divine Worship, etc. The first part has seven titles, devoted one to each sacrament. The last one is taken up with the sacrament of marriage. It is subdivided into twelve chapters, preceded by a few preliminary canons.

In a short Introduction, the legislator gives the nature, ends, properties, and main divisions of marriage; he determines the authority that regulates it and defines the canonical value of betrothals.

In the twelve chapters are treated successively, and in a logical order, the following questions:

What should be done before celebrating a marriage in order principally to ascertain the freedom of the parties?

The impediments which may be an obstacle to the marriage.

Marriage itself: its essential element the consent.

The form of marriage.

Marriages of conscience.

Time and place of celebration of marriage.

Effects of marriage.

Dissolution of marriage, partial and total.

Revalidation of marriage, simple and *in radice.*

Second marriages.

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MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW

PRELIMINARY NOTIONS

NATURE, END, PROPERTIES, VARIOUS KINDS OF MARRIAGE; AUTHORITY THAT GOVERNS IT; CANONICAL VALUE OF BETROTHMENTS

I. NATURE OF CHRISTIAN MARRIAGE

1. Marriage is a contract by which man and woman become irrevocably united for the procreation and education of children. It has its origin in the natural law. God gave it in the beginning a sacred and religious character; and Christ raised it to the dignity of a sacrament of the New Law.

The matrimonial legislation of the Church presupposes, as its foundation, this elevation of the marriage contract to the sacramental dignity; and hence it is especially declared in the first canon:

Can. 1012. § 1. Christus Dominus ad sacramenti dignitatem evexit ipsum contractum matrimonialem inter baptizatos.

§ 2. Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum.

2. § 1. Our Lord raised to the dignity of a sacrament the contract of marriage between baptized persons.

§ 2. Hence between baptized persons there can be no valid contract of marriage without there being a sacrament.

1.° That marriage is a sacrament has always been the belief and teaching of the Church. (Trent, Sess. xxiv, de Mat., can. 1.) That the marriage contract itself constitutes the sacrament has not always been so clearly understood.

Without speaking of such writers as Launoy, Nuytz, and others, for whom the sacrament of marriage is only an accessory to the contract and consists in the nuptial blessing exclusively, there have been theologians and canonists who, unable to find all the necessary elements of a sacrament in certain marriage contracts commonly recognized as valid, were led to admit a real distinction between the contract and the sacrament, making the latter consist of two elements —the contract as the matter and the nuptial blessing as the form. (Estius in iv Sent., dist. xxvi, § 10, Melchior Canus.) Some of the Fathers of the Council of Trent favored this theory as reconciling better the substantial immutability of the sacraments with the power of establishing matrimonial impediments; and Benedict XIV (De Syn. Diœc., l. viii, c. 13) still speaks of it as based on very solid arguments; but after the clear declarations of Pius IX (Syllabus prop. 66, 73) and of Leo XIII (*Arcanum,* Feb. 10, 1880) it was no longer tenable.

3. 2.° Nor could it be admitted, with another school (Salmant, Cursus Theologiæ Moralis, Tract. xi, cap. iii; Billuart; Pontius), that, while there is always a contract wherever there is a sacrament, yet, there can be a contract between Christians without there being a sacrament. As is explicitly declared in this canon, the contract of marriage between Christians is so completely identical with the sacrament that one can not exist without the other. Hence two Christians who would have no intention of receiving the sacrament would not make a valid contract. It is not necessary that they should have the sacrament in mind, but if their predominant intention is to exclude it, there is no contract; because for Christians the contract itself must be a sacrament whenever it exists.

4. 3.° For the same reason, if at the time of the marriage the parties were not baptized and they are baptized afterwards their marriage then becomes a contract between Christians and, therefore, a sacrament. If only one of the parties is baptized, it is doubtful whether even for him the marriage is a sacrament as, strictly speaking, we have not here a contract between Christians. (Cf. Palmieri, De Matrimonio Christiano, cap. 11, thesis 11; Wernz, Jus Decretalium, vol. iv, n. 44; Catholic Encyclo., vol. ix, p. 713.)

II. END AND PROPERTIES OF MARRIAGE

Can. 1013. § 1. Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuum adjutorium et remedium concupiscentiae.

§ 2. Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano peculiarem obtinent firmitatem ratione sacramenti.

5. **§ 1.** The primary end of marriage is the procreation and education of children; the secondary end, mutual support and the relief of concupiscence.

§ 2. The essential properties of the marriage contract are unity and indissolubility, to which the sacrament gives a special firmness in Christian marriage.

1.° The procreation and education of children form the primary aim of marriage, which was instituted by the Creator for the propagation of the human race. But mutual support and the appeasement of the passions are ends also, although secondary and subordinate. As will be said later, positive exclusion or even mere ignorance of the primary end would render the marriage null. As long, however, as the primary end is not excluded, marriage contracted for one of the secondary ends, or even for any reasonable motive, is both valid and licit.

6. 2.° (*a*) Theologians commonly teach that polyandry (union of one woman with several men) is contrary to the primary precepts of the natural law and remained always forbidden. Polygyny (union of one man with several women) is in opposition to the secondary precepts of the natural law: forbidden in the original institution of marriage, it was permitted under the old Dispensation by way of temporary concession until Christ brought marriage back to the primitive limits of monogamy. Even among infidels, at least at present, a man can have only one legitimate wife.

(*b*) Likewise the bond of marriage is indissoluble by the law of nature. Under the Mosaic Dispensation the law was relaxed by divine authority. It was restored by Christ to its original severity. Exceptions may be made, but only by God, directly or through His representative the Church. It is not within the limits of any merely human power to dissolve a marriage which has been validly contracted.

(*c*) In Christian marriage the contract, raised to the dignity of a sacrament, becomes a sacred thing, and its properties are more inviolable. It is more difficult to dissolve it, and polygamy is more repugnant to it than to a merely natural marriage.

III. MARRIAGE FAVORED BY LAW

Can. 1014. Matrimonium gaudet favore juris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur, salvo praescripto can. 1127.

7. Marriage enjoys the favor of the law; therefore, in case of doubt, its validity ought to be maintained until the contrary be proved, taking into account, however, the prescriptions of can. 1127.

It is a general principle that when an act has been performed it ought to be considered valid until it is proved to be null. This applies in a special manner to marriage, which is a sacrament and indissoluble by divine law. To pronounce a marriage null without sufficient evidence is to run the risk of "setting asunder what God has put together."

The burden of proof lies on the one who attacks the marriage. The only exception is in favor of a convert to the Faith. (Can. 1127.)

IV. DIFFERENT KINDS OF MARRIAGE

Can. 1015. § 1. Matrimonium baptizatorum validum dicitur ratum, si nondum consummatione completum est; ratum et consummatum, si inter conjuges locum habuerit conjugalis actus, ad quem natura sua ordinatur contractus matrimonialis et quo conjuges fiunt una caro.

§ 2. Celebrato matrimonio, si conjuges simul cohabitaverint, praesumitur consummatio, donec contrarium probetur.

§ 3. Matrimonium inter non baptizatos valide celebratum, dicitur legitimum.

§ 4. Matrimonium invalidum dicitur putativum, si in bona fide ab una saltem parte celebratum fuerit, donec utraque pars de ejusdem nullitate certa evadat.

8. § 1. A valid marriage between Christians is *only ratified* when it has not been completed by consummation; it is *ratified and consummated* when between the parties has taken place the physical act which the marriage contract has in view, and by which the parties become one flesh.

§ 2. If after the celebration of the marriage the parties have lived together, the marriage is supposed in law to be consummated until the contrary be proved.

§ 3. Marriage validly contracted between unbaptized persons is called *legitimate.*

§ 4. An invalid marriage which has been contracted in good faith by at least one of the parties is called *putative* until both parties become certain of its nullity.

9. 1.° These divisions and these terms, long in use among canonists, are here sanctioned by the legislator and their meaning is officially defined. A marriage is *only ratified* when it has not been consummated, but the term *ratified* is usually applied to Christian marriage and opposed to *legitimate,* which designates a merely natural contract. A marriage between two unbaptized persons becomes *ratified* when both parties are baptized. If it was never consummated, it will be ratified only. If it was consummated before Baptism and not after, it will be *consummated and ratified;* if consummated after, it will be *ratified and consummated,* which is not quite the same in regard to indissolubility or dispensations.

A marriage is said to be consummated when it is followed by sexual intercourse sufficient of itself for the purpose of generation. Onanistic or other incomplete relations do not consummate the marriage, but only those by which the spouses become one flesh, as said in the text; and they become one flesh *per commixtionem seminum vel sanguinum.* On the other hand, any sexual intercourse suitable of itself for generation, whether voluntary or involuntary, conscious or unconscious, suffices for consummation. (Gasparri, n. 1064f.; A. Eschbach, Disputationes Physiologico-Theologicæ, Disputatio secunda; J. Antonelli, Medicina Pastoralis, vol. ii, n. 42.)

10. 2.° A marriage contract which is valid without being a sacrament is called simply *legitimate.* When contracted between a baptized and an unbaptized person, with dispensation, the marriage is considered as *ratified* in regard to dissolubility (Can.

1119), although its sacramental character be not admitted by all; but a marriage between two unbaptized persons does not acquire all the indissolubility of ratified marriage by the baptism of one of the parties, since it can be dissolved by the subsequent marriage of that party.

11. 3.° A marriage although null enjoys several legal privileges and is sufficient for the legitimacy of children, when, and as long as, it is believed to be valid by at least one of the parties. It is then called *putative.* If it has been contracted with all necessary formalities, but is null because of some secret impediment known to the parties, it is said, by canonists, to have an appearance of marriage. (Wernz, v. iv, n. 29.)

V. AUTHORITY THAT REGULATES MARRIAGE[1]

Can. 1016. Baptizatorum matrimonium regitur jure non solum divino, sed etiam canonico, salva competentia civilis potestatis circa mere civiles ejusdem matrimonii effectus.

12. The marriage of baptized persons is regulated not only by divine but also by canonical law, the civil power remaining competent in regard to the civil effects of marriage.

All marriages, without exception, are regulated by the natural law; but they may be regulated besides by the law of the society, civil or religious, to which the parties belong.

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[1] De Smet, n. 215.

13. 1.° *Marriage of baptized persons.* It is governed by the divine law, the canonical law, and, in regard to certain effects, the civil law.

(*a*) The divine law. All that is required by the law of nature for a contract and for a marriage contract is necessary also for Christian marriage. To this must be added the prescriptions of the divine positive law from which the Church does not and can not dispense.

14. (*b*) The ecclesiastical law. The Church claims full, independent and exclusive power over the marriage of all baptized persons—Catholics, heretics, schismatics—because she has received from Christ supreme authority in religious matters, and marriage is a sacrament; and because by Baptism men become her subjects, whether willing or not. That power is exclusive, "To decree and ordain about the sacrament is, by the will of Christ, so much a part of the power and duty of the Church that it is plainly absurd to maintain that even the smallest particle of such power has been transferred to the civil ruler." (Leo XIII, Ency. *Arcanum.*) It includes the legislative, judicial, and coercive power; that is, the power of establishing impediments both diriment and impedient, of deciding all matrimonial causes, of constraining married persons to comply with their obligations, etc. . . . It has, however, to be exercised within the limits of the natural and divine positive law, does not extend to merely civil effects, and should not unnecessarily interfere with the liberty of marriage. To marry is a right which every man has received from nature. It has to be respected; still, it is not absolutely independent in its exercise—the common and private good may demand that it be restricted at times and perhaps taken away altogether in some extraordinary cases. Thus the Church might forbid a person infected with a serious contagious disease ever to marry, even under pain of nullity. In reality, such a person has no right to marry. Perhaps the prohibition to marry might be pronounced as a punishment for certain crimes, but it should be only for very grave crimes, and even then it could be used only very seldom; at present it is found more expedient to have recourse to other penalties. Possibly also if the number of the vicious and degenerate grew so large that the very safety of society would be endangered and the common good would demand imperatively that measures be taken to prevent the birth of too large a proportion of abnormal children, the Church might exclude from the privilege of marrying certain persons who are clearly unfit for raising a family. But it will rarely, if ever, occur, that such a measure be necessary, and whenever another remedy can be found, it ought to be preferred. (De Smet, n. 219.)

15. (*c*) Civil power. The civil power has no authority over the bond itself or what is essential to it, and can establish no real impediment, diriment or impedient, to the marriage of Christians. It has authority over the civil effects. What can be considered merely civil effects it is not always easy to determine, and there is some difference of opinion among canonists on that point. Ordinarily they define civil effects those which concern the temporal order, and are not inseparable from the marriage contract, as what pertains to the dowry, the right of succession, etc. (Wernz, n. 50; Gasparri, n. 278.) The State has legislative, judicial, and coercive power over these (De Smet, n. 220); it may require certain formalities, like registration, as a condition for granting legal value to a canonically valid marriage, and punish the omission of those requirements. But even the purely civil effects should not be withheld without legitimate cause from a valid contract. And those which, although of a civil or temporal order in themselves, are inseparable from a valid contract—e.g., the legitimacy of children or cohabitation—should not be denied by the civil courts to marriages contracted in accordance with the laws of the Church. (Wernz, n. 82.)

16. 2.° *Marriage of unbaptized persons.* Our law does not mention them because the Church does not legislate for them. She may, however, have to pronounce on their validity, as, v.g., in the case of converts, or in the case of infidels seeking to marry Christians after a previous marriage. If that marriage had been contracted with an impediment of the natural or divine positive law, it is without hesitation declared null. But the Roman Congregations have also repeatedly pronounced the same decision and permitted a second marriage, when there was no other obstacle to the validity of the first than an impediment of the civil law. (S. C. de Prop. Fide, June 26, 1820, n. 744; Wernz, n. 80; Gasparri, n. 281.) From this and from intrinsic arguments it is inferred that the Church recognizes in the supreme civil authority the power of regulating the marriages of unbaptized citizens, of establishing diriment and prohibiting impediments, and in general of exercising, with a view to temporal welfare, the same legislative, judicial, and coercive power over non-Christian as she exercises over Christian marriages. This conclusion, commonly admitted till the middle of the nineteenth century, encountered then some opponents who seemed to be afraid of granting too much power to the State. In the absence of a general and final decision of the Holy See, it can not be said to be absolutely certain; but it has the support of the great majority of canonists and is considered certain enough to be acted upon by the Roman Congregations. (Gasparri, n. 281f.; Wernz, n. 75.)

17. To be valid, civil laws regarding marriage, as other laws, must have a reasonable cause, and they should be in conformity with the divine right. The State, at least as much as the Church, must abstain from establishing those absolute impediments which take away from a person the innate right of marrying that he has from nature. This seems to be forgotten by those legislators who, under the pretext of promoting the propagation of offspring sound in mind and in body, would demand for marriage a certain physical perfection, and exclude from it all those who are liable "to bring into the world children suffering from some hereditary taint."

18. It should be observed that a marriage between infidels is not null by the mere fact that it was contracted in violation of a civil law. The prohibition may have no reference to the bond itself, but only to the civil effects; or, if it constitutes an impediment, we have to examine whether it is a diriment or a prohibiting one; the distinction is not always clearly made by civil legislators. Then we have to see whether the impediment is a reasonable one and binding in conscience. A comparison with the canonical impediments will help to decide that question. (Jean Chabagno, Le mariage des infidéles dans ses rapports avec la loi civile en général et la loi Japonaise en particulier, Yokohama—Canoniste Contemporain, Sept., 1914.) As in any case it remains somewhat doubtful that civil impediments are binding in conscience, cases of nullity, on that ground, should be treated with caution, and when more difficult should be referred to the Holy See. (De Smet, n. 224; De Becker, De Matrimonio, p. 43.)

VI. PROMISES OF MARRIAGE, BETROTHALS

Can. 1017. § 1. Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

§ 2. Si utraque vel alterutra pars scribere nesciat vel nequeat, ad validitatem id in ipsa scriptura adnotetur et alius testis addatur qui cum parocho aut loci Ordinario vel duobus testibus, de quibus in § 1, scripturam subsignet.

§ 3. At ex matrimonii promissione, licet valida sit nec ulla justa causa ab eadem implenda excuset, non datur actio ad petendam matrimonii celebrationem; datur tamen ad reparationem damnorum, si qua debeatur.

19. § 1. A promise of marriage, whether unilateral or bilateral, that is, sponsalitial, is null in both forums unless it be made in writing, signed by both parties, and by either the parish priest or the Ordinary of the place, or at least by two witnesses.

§ 2. If either or both parties be unable to write, mention of that fact must be made in the document, for the validity of the act, and another witness must be added to sign the document, together with the parish priest or Ordinary of the place or the two witnesses spoken of in § 1.

§ 3. But a promise of marriage, although it be valid and there be no just cause to excuse from fulfilment, does not furnish ground for an action to demand the celebration of the marriage; it will, however, permit to bring suit for damages if any be due.

20. A marriage may be promised by one party and the promise merely accepted by the other; we have then a unilateral contract, binding, indeed, if made seriously, in justice, or in fidelity according to the intention of the promisor, but binding only on one side, like all gratuitous contracts. Or the promise may be followed by a counter-promise, and we have the bilateral promise of marriage, which is called betrothal. While not necessary in itself, it may be expedient that betrothal should precede marriage, as a barrier against hasty unions. It was in use among the Jews, the Romans, the Germans; the Christian

Church always permitted it, often encouraged it, in some places even made it obligatory. (Wernz, n. 88, 91; Instructions of the Vicariate of Rome, 1; Canoniste, Sept., 1911, p. 595.)

Betrothal is a natural contract and it has been sanctioned by canon law. We may consider it here under that twofold aspect. (Tanquerey, n. 944.)

I. BETROTHAL AS A NATURAL CONTRACT

21. 1.° Its nature and conditions: (*a*) Betrothal is a reciprocal promise of future marriage made by a determinate man and a determinate woman, who are not disqualified for it.

(*b*) The contract is constituted by the consent, which must be real, free, simultaneous, and legitimate; the contracting parties must have the use of reason, which is not presumed before the age of seven years, and the ability to contract marriage at some future time.

(*c*) No particular formalities are required by the natural law, but only that the consent be clearly manifested.

22. 2.° Its effects: (*a*) A grave obligation of justice to marry the betrothed person at the proper time and consequently a prohibition to marry any other as long as the valid betrothal exists; (*b*) an obligation for the parties to keep the sponsalitial faith and not to render themselves unfit for marriage.

Those who without legitimate excuse do not comply with their promise are bound to indemnify the other party for the loss inflicted; and even should there be no loss suffered, a compensation may be exacted from them as penalty for broken faith and a satisfaction for the wrong done.

23. 3.° Dissolution: Betrothal is dissolved (*a*) by the mutual consent of the parties, explicit or implicit; (*b*) by a supervening impediment or obstacle which renders the marriage impossible or unlawful; (*c*) by a breach of the sponsal fidelity; (*d*) by a subsequent notable change or the discovering of a grave defect which, if known before, would have prevented the contract being entered into; (*e*) by delay in complying with the promise, beyond the appointed or reasonable time; (*f*) by dispensation granted by the head of the social body, the Pope in the case of the faithful, the civil ruler in the case of the non-Christians. (De Smet, n. 31.)

II. BETROTHALS AND CANON LAW

A. The Ancient Law of the Church

24. 1.° As to the conditions that are necessary and sufficient for the validity of the contract, the Church accepted the prescriptions of the natural law, completing them only on a few points of minor importance.

2.° The effects produced by the natural contract of betrothal were all sanctioned by the ecclesiastical law, which added the diriment impediment of *public decency,* arising between each party and the blood relations of the other in the first degree, provided the betrothal be valid and absolute.

By decretal law (Alexander III, Episcopo Pict., cap. 10, de Sponsalibus) the Bishop had the right to compel the betrothed, even by means of censures, to keep their promise; and the unjustly forsaken party could sue the other for damages before the ecclesiastical court.

25. 3.° Formalities: (*a*) Before 1908 no special formalities were required by the general law of the Church for the validity of betrothals. At the Council of Trent it was proposed to exact the presence of three witnesses. Bishops asked at various times that some special form be prescribed, but the discipline remained unchanged. Regulations departing from it in diocesan statutes were refused approval. If in 1880 the Holy See declared that a written document and the presence of a notary were necessary in Spain for the validity of betrothals, it was on account of the custom that had prevailed in that country since the beginning of the century. (Gasparri, n. 26.)

(*b*) It was found, however, that clandestine betrothals were not without serious inconveniences, and Bishops again asked the Holy See for a remedy. Consequently, Pius X in the decree *Ne temere,* published August 2, 1907, ordained that "only those betrothals are considered valid and produce canonical effects which have been contracted in writing, signed by both parties and either the parish priest or the Ordinary of the place or at least by two witnesses. In case one or both parties be unable to write, this fact is to be noted in the document and another witness is to be added, who will sign the writings as above, with the parish priest or the Ordinary of the place or the two witnesses."

From the moment of the enforcement of this law, that is, Easter Sunday, April 19, 1908, no contract of betrothal is canonically valid unless the above formalities are observed; it is not even binding in conscience, according to the more common opinion.

B. Promises of Marriage and the Present Legislation

26. The provisions of the *Ne temere* are maintained substantially in the new Code, but completed and modified in a few points.

1. The law will apply now to all promises of marriage, not simply to mutual promises or contracts of betrothal; and it is explicitly enacted that the formalities prescribed here are required for the value of those promises in the internal as well as in the external forum.

2. The formalities prescribed, besides what is required by natural law, are the following:

(*a*) The contract must be made in writing, signed by the parties and, besides, by either the pastor or the Ordinary of the place, or by at least two witnesses, if neither the pastor nor the Ordinary sign. It is the pastor or the Ordinary of the place where the contract is made who is to sign it, not the pastor of the parties.

Only the pastor is mentioned, with the Ordinary, as having that quality of official witness, not the assistants; nor can he delegate his authority, as is implied in the text of the law and was officially declared by the S. Cong. of the Council, March 28, 1908.

No special qualifications are demanded in the witnesses; children, women, non-Catholics, etc., can, strictly speaking, act as such, as long as they have the use of reason and are able to write.

Nothing is determined as to the precise form or wording of the contract, but a decree of the Congregation demanded that it be dated. (S. C. C., July 27, 1908.)

(*b*) If one or both of the parties be unable to write, either because they never learned or for some other reason, the fact has to be noted in the document, to make it even valid; and another witness has to be added who will sign with the pastor or the Ordinary or the other two witnesses according to the case.

It does not make any difference whether it is one or both of the parties that can not write; one additional witness will suffice in either case. But the signature of an additional witness can take the place of that of the parties only when the latter can not write. If they failed to sign the document when they are really able to do so, the contract would be null.

(*c*) Conditional engagements and engagements by proxy were considered as valid and lawful under the decree *Ne temere* on the same conditions as before. Nothing in the present law implies a change in the discipline on that point. The decree of the Congregation (July 27, 1907) demanding that both parties sign the contract at the same time (*unico contextu*), requires the presence of both, and consequently excludes engagements by letter.

27. 3. Effects. Promises of marriage made according to the prescribed form will be binding in conscience, but they do not give rise any more to the diriment impediment of public decency, nor to any canonical prohibiting impediment properly so called.

The obligation itself of contracting marriage can not be juridically enforced.

Even under the former legislation it occurred very seldom that ecclesiastical authorities compelled betrothed parties to marry. Pope Lucius III, asked by a Bishop by what censures a certain woman could be compelled to keep a promise of marriage she had made under oath, answered that as marriages ought to be free, the woman should be warned and persuaded rather than forced, because forced marriages have ordinarily unhappy results (17, x, iv, 1). Canonists concluded from those words that coercion should be used, in this matter, only by way of exception. Even those exceptions will not be allowed henceforth.

The ecclesiastical courts will not, however, ignore promises of marriage altogether; they may afford ground for an action for damages. Neither is this inconsistent. Similar provisions are found in modern civil legislations. According to English and American law, "engagements can not be enforced in civil courts, but would furnish good ground for a breach-of-promise suit." Even the Code Napoléon, which denies all binding power to a promise of marriage, permits "a claim for damages, not on account of breach of promise, which law does not forbid, but in consequence of misdemeanor or quasi-misdemeanor, that is to say, deceit or other like wrong."

4. Dissolution. Promises of marriage, whether unilateral or bilateral, even when made with all the formalities described above, remain dissoluble by

mutual consent, substantial change and other causes as heretofore.

VII. INSTRUCTIONS ON MARRIAGE AND MARRIAGE IMPEDIMENTS

Can. 1018. Parochus ne omittat populum prudenter erudire de matrimonii sacramento ejusque impedimentis.

28. The pastor shall not fail, prudently, to instruct the people on the sacrament of marriage and impediments to it.

The insistence of the law on this duty of instructing the people shows the importance the legislator attaches to it. Catholics ought to know the doctrine of the Church on marriage, its nature, its sacredness, its properties. They must have also at least an elementary idea of marriage impediments in order to avoid invalid contracts, which are often due to ignorance and, although not formally sinful, are not sanctified by the sacramental grace.

Prudence is recommended so that anything which might shock the hearers be carefully avoided and information be not given which would be of little benefit and might be simply used to evade the law.

CHAPTER I

PRELIMINARIES TO THE CELEBRATION OF MARRIAGE, AND PARTICULARLY THE MARRIAGE BANNS

GENERAL PRINCIPLE

Can. 1019. § 1. Antequam matrimonium celebretur, constare debet nihil ejus validae ac licitae celebrationi obsistere.

§ 2. In periculo mortis, si aliae probationes haberi nequeant, sufficit, nisi contraria adsint indicia, affirmatio jurata contrahentium, se baptizatos fuisse et nullo detineri impedimento.

29. § 1. Before a marriage is celebrated it must be ascertained that there is no obstacle to its valid and licit celebration.

§ 2. In case of danger of death, if no other proofs can be obtained, it will suffice, unless there be indications to the contrary, to have a sworn statement from the contracting parties, that they are baptized and free to contract marriage.[1]

30. 1.° Respect for the sacrament as well as regard for the interests of the family and of society demand that great care be taken to secure the liceitness and validity of marriages.

During the first centuries all proposed marriages had to be referred to the Bishop, who would see that there were no obstacles to their celebration. (St.

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[1] Gasparri, c. ii; Wernz, n. 129f.

Ignatius, ad Poly., 5.) When the faithful became more numerous and parishes were established, the duty to watch over marriages devolved upon the parish clergy. They were first directed to make a careful investigation in each case; and, later on, when this proved insufficient, they were commanded to publish in church marriages about to be celebrated.

Both the investigation and the proclamation of banns remain obligatory to this day as means of preventing invalid or unlawful marriages.

31. 2.° The law mentions one exception: When a party is in danger of death and no other evidence can be obtained, his testimony may be accepted as sufficient proof of his baptism and of his freedom to marry. The testimony has to be given under oath and be such that it inspires full confidence. If there be any serious reason to doubt its reliability, the marriage can not be permitted without further investigation.

Other cases will, no doubt, occur, when it would be very difficult to comply with all the requirements of the law in this matter. The fact that only one exception is mentioned shows, at least, that, in the mind of the legislator, those prescriptions are not to be dispensed with except for really grave reasons. The way to carry them out will be specified more in detail in the following canons.

I. INVESTIGATION BY THE PASTOR

1.° FREEDOM AND INSTRUCTION OF THE PARTIES

Can. 1020. § 1. Parochus cui jus est assistendi matrimonio, opportuno antea tempore, diligenter

investiget num matrimonio contrahendo aliquid obstet.

§ 2. Tum sponsum tum sponsam etiam seorsum et caute interroget num aliquo detineantur impedimento, an consensum libere, praesertim mulier, praestent, et an in doctrina christiana sufficienter instructi sint, nisi ob personarum qualitatem haec ultima interrogatio inutilis appareat.

§ 3. Ordinarii loci est peculiares normas pro hujusmodi parochi investigatione dare.

32. § 1. The pastor whose right it is to assist at a marriage ought to inquire carefully beforehand, and in good time, whether there are any obstacles to the marriage.

§ 2. He shall interrogate both the bridegroom and the bride, separately and prudently, inquiring whether they, particularly the bride, give their consent freely, whether they are sufficiently instructed in Christian Doctrine, unless this last question be deemed useless considering the quality of the persons.

§ 3. It is left for the Ordinary of the place to lay down specific rules for this investigation.

33. 1. It is the pastor who is responsible for the investigation, even when he is not to assist at the marriage personally. If the parties belong to different parishes, either pastor is competent; but generally it is better that the investigation be made by the one in whose parish the marriage is to be celebrated, with the co-operation of the other as far as is necessary. The obligation is in itself a grave one, and would seem to exist even when it is morally certain that no impediment will be discovered. This principle holds good for the publication of the banns and should apply also to the investigation. (Gasparri, n. 142.)

34. 2. The pastor has to interrogate the parties. For a long time this was the ordinary means of ascertaining their freedom. When it was found insufficient, the Fourth Lateran Council (Can. 51, Cap. 3, De Clandestinitate Desponsa.) ordered the publication of the banns of marriage, declaring at the same time that the pastors were not dispensed thereby from interrogating prospective husbands and wives; and likewise when Clement X added another formality, the examination of witnesses, the examination of the parties remained obligatory. Benedict XIV strongly insists on its importance and it is maintained in the new Code. Its object is threefold: The possible existence of impediments, the willingness of the parties, particularly the woman, to marry, and their religious instructions.

35. (*a*) Regarding impediments, merely general questions would frequently not suffice, as the parties may, in good faith, consider themselves free when they are not. What questions should be asked depends on the circumstances; they should refer to such impediments as are likely to be found in the case. The possible existence of a previous marriage deserves special attention. Ordinarily the pastor ought not to question the parties as to impediments involving infamy and supposing sin. This is rather the confessor's province, unless the crime has become known in the external forum, or at least is strongly suspected. The parties should be warned, when they go to confession, to let their confessor know that they are about to be married in order that he, too, may ask the proper questions and give the necessary directions.

36. (*b*) Willingness to marry. The Church has always insisted on the freedom of the marriage contract. In her legislation she has defended the liberty of subjects against the pretensions of princes, that of children against abuses of parental authority, and that of all the faithful in general against undue influences. Through her representatives, the pastors, she wishes to extend her protection to every individual contract, and she refuses her sanction to any that is not entered into knowingly and willingly, by both parties. Free consent constitutes the contract; it is the first condition, then, for the validity of the sacrament, the first one to be ascertained. Even at the present day such freedom is sometimes wanting and many a marriage is impugned on that ground. It is not without reason, then, that the law commands us to interrogate the parties on that point, particularly the bride, who is more liable to be unduly influenced. The questions ought to be asked privately and individually; special care should be taken when there are reasons to believe that pressure has been exercised; and there should be no hesitation in supporting children against their parents themselves if the case demands it.

37. (*c*) Religious instruction. The duty of pastors to see that persons about to be married are sufficiently instructed in the rudiments of the Christian Faith has been frequently affirmed by Popes (v.g., Innocent III, Clement XI, Benedict XIV), and many rituals contain directions on that subject. The present law renews those prescriptions. Persons about to found a Christian family ought to know at least the principal truths of that Faith in which they are to raise their children. If they do not, and neglect to be instructed, when they can, Benedict XIV declares that they ought to be considered and treated as publicly unworthy.[1] He admits, at the same time, that a rudimentary knowledge suffices when nothing more can be obtained, and that those who are so dull of understanding that they can hardly learn anything by heart and retain it, are "not to be kept indefinitely from marriage, which was instituted for the requirements of nature, and which consequently must not be forbidden any one except for his own fault." (De Syn. Diœces., l. viii, c. 14; III Plen. C. Balt., n. 125.)

When the pastor knows already that the party is sufficiently well instructed, there is no need of examination. Warning is given, however, not to presume that instruction too readily, as religious ignorance is very common even among otherwise well enough educated people; and persons who are fairly well instructed on other points may have incomplete, vague, or wrong views on marriage, married life, the rights and duties of married people. (De Smet, n. 331, 335.)

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[1] NOTE: The present law does not demand that they be treated as public sinners.—Commission of Interpretation, June 2-3, 1918. A. A. S., August, 1918, p. 345.

38. 3. The common law does not enter into any details concerning the method to be followed in the investigation; it is left for the Bishops to do so. They will be guided in this by the existing instructions of the Holy See. The prescriptions of Clement X are no more obligatory in themselves, but the pains taken to adapt the present law to actual conditions shows that in the intention of the legislator it should henceforth be observed literally. There is no mention of any power of dispensing granted to Bishops.

39. 4. The ancient law had, besides, what was called the *examination of witnesses.* It was prescribed by several decrees of the Holy Office, particularly that of August 20, 1670, approved by Clement X, in which the obligation of the examination is insisted on and the formalities to be followed are explained in detail. The examination was to be made in presence of the Bishop, or the vicar-general, or some prominent ecclesiastic specially delegated for it. At least two witnesses had to be interrogated according to the formula given in the decree of 1670 and an instruction of 1890; they were to testify under oath to the free state of each of the intending parties. To have recourse to the suppletory oath in case the evidence was not sufficient required special faculties from the Holy See. When the examination was made in presence of a delegate, the report of the proceedings was to be sent to the Bishop, who decided in all cases whether the publication of banns would be permitted.

In practice that discipline was observed only in the Pontifical States; in other places either it was never received or soon fell into disuse. (Bishop Kenrick, n. 193, declares that in the United States it is often impossible to have any other proof of the freedom to marry than the sworn testimony of the parties themselves; Gasparri, 139; Wernz, n. 133; De Becker, De Sponsalibus et Matrimonio, sectio iv, cap. viii, p. 290.) That the Holy See desired the observance of that law, whenever possible, is proved by repeated declarations; at the same time, the numerous dispensations granted in recent years show that the difficulty to carry out all its prescriptions, at the present day, was fully realized.

In the new Code, the examination of witnesses is not mentioned.

2.° BAPTISM AND CONFIRMATION

Can. 1021. § 1. Nisi baptismus collatus fuerit in ipso suo territorio, parochus exigat baptismi testimonium ab utraque parte, vel a parte tantum catholica, si agatur de matrimonio contrahendo cum dispensatione ab impedimento disparitatis cultus.

§ 2. Catholici qui sacramentum confirmationis nondum receperunt, illud, antequam ad matrimonium admittantur, recipiant, si id possint sine gravi incommodo.

40. § 1. Unless the parties have been baptized in his own territory, the pastor shall exact a certificate of baptism from both of them, or from the Catholic party alone if the marriage is to be contracted with a dispensation from the impediment of disparity of cult.

§ 2. Catholics who have not as yet received the sacrament of Confirmation, shall receive it before being admitted to marriage if they can do so without grave inconvenience.

41. 1. An extract from the baptismal register is the official proof of baptism, and should be exacted whenever possible. (Cong. Sac., March 6, 1911.) It will be a means also of finding out what is the age and religion of the parties, and, if the regulations regarding marriage registration have been observed, whether they were married before. The text of this canon implies that it should be demanded of the non-Catholic party in a mixed marriage.

The certificate should be recent and given with a view to marriage. It is not required now that it should be authenticated by the Ordinary.

2. The obligation of receiving Confirmation before being admitted to marriage already existed in several places by particular legislation. It is now the common law, from which, however, a grave inconvenience excuses.

II. THE BANNS

A. Former Discipline

42. The examination of the parties by the pastor, even with the assistance of relatives and neighbors (Wernz, n. 135, note 13; Hefele-Leclercq, Histoire des Conciles, tome iii, p. 1110), proved insufficient, and the Fathers of the Fourth Lateran Council thought it necessary to devise some additional measure. For some time previously it had been the custom or even the law, in some places, particularly in France, to publish in church the names of persons intending marriage, so that those who knew of any impediments to their union might reveal them, and those who had any reason for opposing the marriage would be given an opportunity to do so. The Council of Lateran decided to extend that law to the whole Church (1215). Apparently the law was not observed everywhere, for several particular Councils find it necessary to insist upon it. They also determine more in detail the mode of its execution; thus some of them command that the banns be published three times. The Council of Trent renewed the law of the Lateran. It is part of the famous decree *Tametsi* on clandestine marriages, which has been in force to the present day wherever it was published. The clause concerning the banns could be published independently of the one regarding the formalities of marriage; and, moreover, where the decree of Trent was not published the Lateran decree remained in force. In England the First Council of Westminster commanded that the banns of marriage be published. In the United States the Sixth Provincial Council of Baltimore (1846) expresses the wish that the law of Lateran and of Trent be introduced into all the Dioceses of the Province (p. 244, iii). The First Plenary Council of Baltimore in 1852 made it obligatory after Easter of 1853 (n. 11) and that decree was confirmed by the Second Plenary Council in 1866 (n. 331-333).

B. The Present Law.

43. The present law is nothing but the law of Trent with a few modifications which experience had showed to be necessary and most of which had been introduced already by custom or indults. It will have to be interpreted, therefore, in the same sense as the ancient law, except where it is clear that a change has been made; and the existing customs or local legislation are not abrogated unless they are contrary to the new law.

I. THE LAW ITSELF

Can. 1022. Publice a parocho denuntietur inter quosnam matrimonium sit contrahendum.

44. The pastor shall publish pending marriages.

This canon is taken from the decree *Tametsi;* it imposes the same grave obligation and is binding everywhere, in every case, even when it is morally certain that there is no impediment to the marriage. The pastor may discharge his obligation through a delegate, but the delegate himself should be a priest or a deacon, not an inferior cleric—still less a layman, except in case of necessity. The banns are not required for the validity. (Tanquerey, n. 918.)

II. MODE OF PUBLICATION

1.° *Place*

Can. 1023. § 1. Matrimoniorum publicationes fieri debent a parocho proprio.

§ 2. Si pars alio in loco per sex menses commorata sit post adeptam pubertatem, parochus rem exponat Ordinario, qui pro sua prudentia vel publicationes inibi faciendas exigat, vel alias probationes seu conjecturas super status libertate colligendas praescribat

§ 3. Si aliqua sit suspicio de contracto impedimento, parochus etiam pro breviore commoratione consulat Ordinarium, qui matrimonium ne permittat, nisi prius suspicio, ad normam § 2, removeatur.

45. § 1. The banns of marriages ought to be published by the pastor of the parties.

§ 2. If one of the parties has lived in another place for six months after reaching the age of puberty, the case shall be submitted to the Ordinary, who, in his prudence, will either demand that the publications be made in that place, or that other proofs or conjectures be gathered regarding the freedom of the party.

§ 3. If there is some suspicion of the existence of an impediment, the pastor shall, even for a shorter residence, consult the Ordinary, who will not permit the marriage until the suspicion be removed by the means suggested in § 2.

46. 1. The *parochus proprius* who is to make the publications is the pastor of the place in which the parties have their domicile or quasi-domicile, or if it is question of *vagi,* their residence. If both parties have their domicile or quasi-domicile in the same parish and have never resided elsewhere for any length of time, the banns are to be published only in that parish. If their domicile or quasi-domicile is in different parishes; or if each one has several domiciles or quasi-domiciles, according to the strict letter of the law, the banns should be published in all those places, for the pastor of each one of them is *parochus domicilii vel quasi-domicilii.* If this offered serious difficulties or seemed altogether useless, dispensation would easily be obtained.

47. 2. Under the new law an investigation has to be made also in all places in which a person is liable to have incurred an impediment, the Bishop being judge of the form the investigation will take. A person is liable to have incurred impediments in any place in which he has spent six months after reaching the age of puberty, that is, 12 for females and 14 for males. Whether the banns of marriage should be published in all those places, the Bishop is to decide. In some cases this would be very difficult or of little use, as when a person has been moving frequently from one parish to another, or when, owing to the frequent changes in the population, he is entirely unknown to the residents of the place. The Ordinary may in such cases insist on the publications or be satisfied with the deposition of reliable witnesses. In default of witnesses, every surmise or circumstance must be made use of to obtain the necessary evidence. Recourse may be had to the suppletory oath and if the party himself is a trustworthy person his sworn testimony may be accepted as sufficient evidence of his freedom to marry, if no other proof can be obtained.

48. 3. When a person has been less than six months in a place there is regularly no need of publishing the banns in that place or of making any investigation. If, however, there was some positive reason to think that an impediment may have been contracted during that short period of time, the investigation should be made as in the preceding case. The merely possible existence of an impediment is not sufficient to make the investigation obligatory; there must be some probability, some foundation, not necessarily very strong, for the belief or suspicion.

No information is required from the place of origin as such and consequently none will be necessary, outside of the baptism certificate, if that place was left before attaining the age of puberty.

2.° *Time*

Can. 1024. Publicationes fiant tribus continuis diebus dominicis aliisque festis de praecepto in ecclesia inter Missarum sollemnia, aut inter alia divina officia ad quae populus frequens accedat.

49. The banns shall be published on three successive Sundays or feast-days of obligation in the church, during Mass or during any service at which there is a large attendance of people.

1. The Lateran Council did not specify anything about the number of publications; the Council of Trent demanded three; the present law also. In practice the banns are very seldom published three times, at least in many countries.

2. The publications are to be made on three successive Sundays, or feast-days of obligation. It is

commonly admitted that the publications can be made on feast-days formerly of obligation and that those could be three successive days. (De Smet, n. 38.)

3. The "church" has been interpreted as the parish church or one used as parish church, like mission churches, chapels of ease, *ecclesiæ filiæ* (S. C. C., 1901), but not public or semi-public chapels. Some thought, however, that considering the end of the law it is not the place that matters most, but the presence of the people, and that therefore the banns might be published in chapels, or even any place in which Mass would be celebrated with a large concourse of people. For the same reason, they would readily permit the publication of the banns, under the same circumstances during some other services than the parish Mass. This latter extension is admitted by the present law, and would seem to imply the former also. The parish Mass and parish church remain the regular time and place for publishing the banns, but it may be done also during other services if the end of the law can thereby be attained. What the concourse of people should be is not determined. If it is as large as it usually is at the parish Mass it must be considered sufficient.

3.° *Form*

Can. 1025. Potest loci Ordinarius pro suo territorio publicationibus substituere publicam, ad valvas ecclesiae paroecialis aliusve ecclesiae, affixionem nominum contrahentium per spatium saltem octo dierum, ita tamen ut, hoc spatio, duo dies festi de praecepto comprehendantur.

50. The Ordinary may in his territory substitute for the publications the public posting of the names of the contracting parties on the door of the parish or other church for a period of at least eight days, so that, however, within that time be included two days of obligation.

51. 1. Heretofore the publications were to be made orally, and this remains the ordinary form, but the new law permits another one. It had been adopted long ago in civil matters when, the people having learned to read, it was possible to reach them otherwise than through the public crier.

Even under the ancient discipline, St. Alphonsus admitted that in cases of real necessity the marriages might be published in writing (Lib. vi, n. 991). In some places to the proclamation during Mass was added the posting at the door of the church (Prov. Council of Naples, an. 1669, tit. iii, c. 9; Council of New Granada, 1868, tit. iv, c. 11.)

In 1907 the Cardinal-Archbishop of Paris represented to the Sacred Congregation of the Council that in the large parishes of his diocese there were so many banns to be published and so many announcements to be made that little time was left for the sermon, the people became tired, hardly listened to what was read, and deserted the parochial Mass. Those inconveniences would be avoided and the end of the law better attained, it was suggested, if, instead of reading those announcements from the pulpit, they were posted in some conspicuous place where the faithful could easily read them. It was asked, therefore, that an indult to that effect be granted for the parishes of ten thousand inhabitants or more. After remarking that this would be a departure from the common law, the consultor of the Congregation nevertheless reported favorably on the subject; the request was granted and specially approved by the Sovereign Pontiff, March 28, 1908. The same concession was soon after asked for and obtained by the Bishops of Milan, Lyons, Le Mans, and others. Now all Ordinaries may grant permission to publish the banns in writing both in the small and in the larger parishes of their diocese (N. R. T., Nov., 1908).

52. 2. The names must be posted in a conspicuous place at the door of the church for at least eight days, including two days of obligation, two Sundays, or one Sunday and one feast-day. What these publications should include is not stated here in detail; it must be all that is required to attain the end of the law. The rituals, diocesan statutes, or custom determine the form to be used. Ordinarily it calls for the full name of the contracting parties, their place of origin, and actual residence, etc.; it reminds the people of their duty of revealing any impediments they might know. (De Smet, n. 39; Tanquerey, n. 986.)

III. PUBLICATIONS OF MIXED MARRIAGES

Can. 1026. Publicationes ne fiant pro matrimoniis quae contrahuntur cum dispensatione ab impedimento disparitatis cultus aut mixtae religionis, nisi loci Ordinarius pro sua prudentia, remoto scandalo, eas permittere opportunum duxerit, dummodo apos-

tolica dispensatio praecesserit et mentio omittatur religionis partis non catholicae.

53. Marriages contracted with a dispensation from the impediment of mixed religion or disparity of cult should not be published, unless the Ordinary of the place, in prudent judgment, all danger of scandal being removed, deems it opportune to permit the publications, provided the apostolic dispensation has been previously obtained and no mention is made of the religion of the non-Catholic party.

The discipline on this point has not been uniform —usually the banns were not published for mixed marriages. A decree of the Holy Office, July 4, 1874, permitted their publication. Now it is left to the prudence of the Ordinary to permit it, if deemed advisable. Regularly it is prohibited.

IV. DUTY OF THE FAITHFUL

Can. 1027. Omnes fideles tenentur impedimenta, si qua norint, parocho aut loci Ordinario, ante matrimonii celebrationem, revelare.

54. All the faithful are bound to reveal to the pastor or to the Ordinary of the place, the impediments they may know before the marriage is celebrated.

This obligation is a grave one, and arises from the natural and divine as well as from the ecclesiastical law. It is binding on all the faithful without distinction, even, or principally, on near relations.

To be excused would require a really grave reason, such as sacramental or professional, not merely natural or promised, secrecy, a grave personal injury, etc. (De Smet, n. 44.)

V. DISPENSATION

Can. 1028. § 1. Loci Ordinarius proprius pro suo prudenti judicio potest ex legitima causa a publicationibus etiam in aliena dioecesi faciendis dispensare.

§ 2. Si plures sint Ordinarii proprii, ille jus habet dispensandi, in cujus dioecesi matrimonium celebratur; quod si matrimonium extra proprias ineatur dioeceses, quilibet Ordinarius proprius dispensare potest.

55. § 1. It is left to the prudent decision of the Ordinary of the place to dispense his subjects, for a legitimate cause, from the publications even when they have to be made in another diocese.

§ 2. If several Ordinaries have jurisdiction in the case, he has the right to dispense in whose diocese the marriage is to be celebrated; if the marriage is to be celebrated outside of their dioceses, any one of the Ordinaries has right to dispense.

1. Under the Lateran discipline no one had power to dispense from the banns except the Pope or his delegate. The Council of Trent, sanctioning perhaps an existing custom, granted that power to the

Ordinary. The present law maintains the concession, and, moreover, it authoritatively decides that even when the publications should be made in another diocese the dispensation may still be granted by the Ordinary of the parties.

56. The Ordinary may dispense when it is prudent and there is a legitimate cause. It would not be prudent if there existed some positive reason to believe that an impediment may be discovered. If it is morally certain that no impediment exists, the wish of the parties might be a sufficient cause for dispensing. (Gasparri, n. 185; St. Alphonsus, vi, 1006; De Smet, n. 43, after Benedict XIV, would seem more severe.) A graver reason is required to dispense from all publications than to dispense from one. (Gasparri, n. 186; De Smet, n. 43.) The Ordinary who has no personal knowledge of the parties or of the circumstances of the case must, for that, depend on the testimony of the pastor. Measures have always to be taken to discover the impediments if there were any.

2. If the parties have domiciles or quasi-domiciles in various dioceses, they also have several *Ordinarii proprii.* The dispensation would have to be granted by the Ordinary in whose diocese the marriage is to be celebrated. It is an application of the principle: *locus regit actum.* But if one of the parties had his domicile, for example, in the diocese of San Francisco, the other had a domicile in the diocese of Chicago and a quasi-domicile in the diocese of New York, and the marriage was to take place in the diocese of Baltimore, dispensation from the publications

could be granted by the Ordinary of San Francisco, or of Chicago, or of New York.

VI. NOTIFICATION

Can. 1029. Si alius parochus investigationem aut publicationes peregerit, de harum exitu statim per authenticum documentum certiorem reddat parochum, qui matrimonio assistere debet.

57. If another pastor makes the investigation or publishes the banns, he shall without delay send official notification of the results to the pastor who is to assist at the marriage.

This is practical when the parties belong to, or have lived in, different parishes. It is not demanded that the report of the pastor belonging to another diocese be authenticated by his Ordinary as long as there is no doubt about the genuineness and official character of the document.

VII. SANCTION

58. According to the Lateran Council, priests who disregard the law of the banns should be suspended for three years, and may be punished more severely. The parties who do the same should be given a penance. If their marriage happens to be null because of a diriment impediment it will be harder to obtain a dispensation and their children will be considered illegitimate, even if the marriage had been contracted before the Church, unless, according to some canonists, one or both parties had acted in good faith. No penalty is imposed by the Council upon witnesses who assist at such marriage, but diocesan synods have often done so. The Council of Trent did not renew those penalties. Still, they were not considered as abrogated for that reason. There is no mention of them in the present law.

III. RESULTS OF THE INVESTIGATION AND PUBLICATIONS

1.° DELAY REQUIRED

Can. 1030. § 1. Peractis investigationibus et publicationibus, parochus matrimonio ne assistat, antequam omnia documenta necessaria receperit, et praeterea, nisi rationabilis causa aliud postulet, tres dies decurrerint ab ultima publicatione.

§ 2. Si intra sex menses matrimonium contractum non fuerit, publicationes repetantur, nisi aliud loci Ordinario videatur.

59. § 1. After the investigation and the publications of banns, the pastor shall not proceed to the marriage before he has received all the necessary documents, and, moreover, except for a grave cause, before three days have elapsed since the last publication.

§ 2. If the marriage has not been contracted within six months, the publications should be repeated unless the Ordinary of the place decides otherwise.

1. The documents here referred to are the reports of other pastors, the denunciations of the faithful,

or any other information that may be needed or may come as a result of the proclamations.

2. Formerly the publications had to be repeated after two months in some places, after six in others. No reason is explicitly required by the law for dispensing from that obligation.

2.° IMPEDIMENTS DISCOVERED

Can. 1031. § 1. Exorto dubio de exsistentia alicujus impedimenti:

1.° Parochus rem accuratius investiget, interrogando sub juramento duos saltem testes fide dignos, dummodo ne agatur de impedimento ex cujus notitia infamia partibus oriatur, et, si necesse fuerit, ipsas quoque partes;

2.° Publicationes peragat vel perficiat, si dubium ortum sit ante inceptas vel expletas publicationes;

3.° Matrimonio ne assistat, inconsulto Ordinario, si dubium adhuc superesse prudenter judicaverit.

§ 2. Detecto impedimento certo:

1.° Si impedimentum sit occultum, parochus publicationes peragat vel absolvat, et rem deferat, reticens nomina, ad loci Ordinarium vel ad Sacram Poenitentiariam;

2.° Si sit publicum et detegatur ante inceptas publicationes, parochus ulterius ne procedat, donec impedimentum removeatur, etsi dispensationem pro foro conscientiae tantum obtentam norit; si detegatur post primam aut secundam publicationem, parochus publicationes perficiat, et rem ad Ordinarium deferat.

§ 3. Demum si nullum detectum fuerit impedimentum, nec dubium nec certum, parochus, ex-

pletis publicationibus, ad matrimonii celebrationem partes admittat.

60. § 1. If a doubt arises about the existence of an impediment:

1.° The pastor shall investigate the matter more carefully, interrogating, under oath, at least two trustworthy witnesses, provided the impediment be not one of those which can not become known without injury to the reputation of the parties; if necessary, he may interrogate the parties themselves.

2.° He may proceed to the publications or complete them if the doubt arises before they were begun or completed.

3.° He shall not assist at the marriage, without consulting the Ordinary, as long as a prudent doubt remains.

§ 2. When it is discovered that an impediment is certainly present:

1.° If the impediment is occult, the pastor shall continue or complete the publications, and refer the matter, without mentioning names, to the Ordinary of the place or to the Sacred Penitentiary.

2.° If the impediment is public and comes to light before the publications were begun, the pastor shall not go further till the impediment is removed, even if dispensation from it had, to his knowledge, been obtained for the internal forum alone; if that impediment is discovered after the first or second publication, the pastor shall complete the publications and refer the case to the Ordinary.

§ 3. Finally, if no impediment is discovered, either doubtful or certain, the pastor must, once the publications are completed, admit the parties to the celebration of marriage.

The result of the investigation or publications may be that there is probable or certain evidence or no evidence at all of the existence of impediments in the case.

61. 1. It is not lawful to contract a marriage without being morally certain that there exists no impediment to it, except in some cases of absolute impediments—the sacrament would be exposed to the danger of nullity and the parties would run the risk of forming a sinful union. Consequently, as long as there remains a reasonable cause for doubt, the pastor should not take upon himself to decide the case, but should consult the Ordinary, who will see whether or not the marriage may be permitted.

Efforts ought to be made to dispel the doubt; one of the means is to interrogate two reliable persons.

Meanwhile, the pastor may go on with the publications.

62. 2. If the existence of an impediment is discovered and the impediment is occult, the pastor goes on with the publications, as there exists no external reason why he should stop; and he applies for a dispensation, taking care that nothing be said or done which would be calculated to make known the parties concerned.

If the impediment is public there is no reason to begin the publications, if they are not yet begun, till the impediment is removed. This would hold even if dispensation for the internal forum alone had been obtained, for such a dispensation has no effect in the external forum.

If the publications are already begun, there is no reason not to complete them, at least if the impediment is one of those which can be removed.

3. If there is no evidence of any impediment, the marriage is permitted.

IV. THE VAGI

Can. 1032. Matrimonio vagorum de quibus in can. 91, parochus, excepto casu necessitatis, nunquam assistat, nisi, re ad loci Ordinarium vel ad sacerdotem ab eo delegatum delata, licentiam assistendi obtinuerit.

63. Except in case of necessity, the pastor shall never assist at the marriage of those who have no fixed abode without referring the matter to the Ordinary or to the priest delegated by him, and obtaining permission.

As these cases offer special difficulties, they require special skill and attention. The Council of Trent itself (Sess. xxiv, de Ref. Mat., cap. 7) had decreed that they be referred to the Ordinary. This was an old rule, dictated by prudence and contained in many rituals. In order that it may more easily be observed, the present law supposes that the Ordinary will appoint a priest to attend to those cases if he can not do so himself.

V. INSTRUCTIONS TO THE SPOUSES

Can. 1033. Ne omittat parochus, secundum diversam personarum conditionem, sponsos docere sanctitatem sacramenti matrimonii, mutuas conjugum obligationes et obligationes parentum erga prolem; eosdemque vehementer adhortetur ut ante matrimonii celebrationem sua peccata diligenter confiteantur, et sanctissimam Eucharistiam pie recipiant.

64. The pastor shall not omit to give to the spouses, according to their different conditions, instructions on the sanctity of the sacrament of marriage, their mutual obligations, the obligations of parents towards their children; he shall strongly exhort them before marriage to make a good confession of their sins and to receive devoutly the Holy Eucharist.

65. 1. Instructions on marriage may be given from the pulpit to the whole congregation or privately to persons about to marry. It is to the private instruction that this canon has reference. It must be adapted to the individual needs. Some persons may need more, some less. The law supposes that all need some, with possibly a few exceptions.

2. By the general law of the Church, confession or communion are not, strictly speaking, obligatory before marriage. They may be so by particular statute, and in all cases they are strongly recommended.

VI. CONSENT OF PARENTS

Can. 1034. Parochus graviter filiosfamilias minores hortetur ne nuptias ineant, insciis aut ration-

abiliter invitis parentibus; quod si abnuerint, eorum matrimonio ne assistat, nisi consulto prius loci Ordinario.

66. The pastor shall seriously admonish children, still under age, not to contract marriage without the knowledge or against the reasonable opposition of their parents; if they do not heed his advice he shall not assist at their marriage except after consulting the Ordinary.

1. According to Roman law, children could not contract marriage validly without the consent of their parents. In the countries subject to Roman legislation, the Church, in the beginning, laid stress also on the necessity of parental consent for marriage; in some places it became necessary even for the validity of the contract, although there is no proof that this discipline was ever extended to the whole Church by a general law. (Wernz, n. 334; De Smet, n. 250; Esmein, v. 1, p. 153.) Little by little, however, as the matrimonial jurisdiction of the Church was more generally recognized and the canonical legislation became more independent of the civil, the rights of children were more explicitly set forth. By the end of the twelfth century, chiefly under the influence of Peter Lombard and the University of Paris, it was admitted that they could contract marriage validly and even lawfully, under certain circumstances, in spite of the opposition of parents.

The revival of legal studies and the influence of legists brought on a reaction in favor of the Roman law, in the latter Middle Ages. Luther and Erasmus, like the old Roman jurists, taught that it is in the power of parents to annul the marriage of their children. (Gasparri, n. 486.) The Council of Trent anathematized that doctrine, and, moreover, when asked, principally by the representative of the king of France, to decree that children could not marry validly without the parents' consent, it rejected the request and upheld the principle of the independent right, even of minors, to dispose of themselves in marriage. Children, however, were directed to consult their parents before taking so important a step, and Bishops considered it in keeping with the spirit of the Council to forbid pastors to assist at the marriage of children who disregarded that direction, without the Ordinary's advice.

67. 2. The present law renews implicitly the decision of Trent and officially sanctions the interpretation which had been given of it, maintaining the right of children, but affirming their duties to parents. It clearly implies that children can marry validly without their parents' consent; it does not say that they are strictly bound to obey their command in the choice of the marriage state or of the partner—although gratitude and love might prompt them to do so—but if they choose to marry they should consult their parents. The nature of the relations existing between them demands it. Should the parents reasonably oppose the marriage, it should not be permitted without the Ordinary's advice. A distinction is made here between reasonable and unreasonable opposition.

If the opposition is unreasonable, children, no doubt, remain free; although even then it might be better for them, when convenient, to yield to the parents' desires. If the opposition is reasonable, it would be sinful for children to persist in their determination; and if they did, they should be treated as persons who do not show the proper dispositions for the sacrament. This, however, does not necessarily mean that the pastor will never be permitted by the Ordinary to bless those marriages; nor that a dispensation is necessary and sufficient to render them fully legitimate, as if want of parental consent was a prohibitive impediment properly so called. The Church is simply enforcing here a precept of the natural law, the duty of prudence and of reverence to parents; and she considers it important enough to require the intervention of the Bishop for deciding when it ceases to bind or when its violation may be tolerated. When by reason of their age or other circumstances children are no more, by natural right, under parental authority, the Church does not impose upon them the duty of subjection in marriage matters. The law is for the *Filiifamilias,* legitimate children, under age, who have not been emancipated; in practice it means minors. (De personis, can. 89.)

CHAPTER II

OF IMPEDIMENTS IN GENERAL. NATURE, SPECIES; POWER TO ESTABLISH, ABROGATE, DISPENSE FROM, THEM

I. NATURE: GENERAL PRINCIPLE

Can. 1035. Omnes possunt matrimonium contrahere, qui jure non prohibentur.

68. All can contract marriage who are not forbidden by law.

It is an axiom in canon law that all men have from nature the right to marry. They retain it until it is legitimately taken away from them; they may exercise it unless forbidden, and they are supposed to possess it and to be free to exercise it until the contrary be proven.

This right, however, is not absolute, nor absolutely free in its exercise. Marriage, established primarily for the good of the race and only secondarily for that of the individual, must be under the control of the social authority; it is a contract and, like any other contract, it must be subject to certain regulations which may render it unlawful or invalid. Obstacles to a valid or lawful marriage are called impediments. (Gasparri, n. 244; Wernz, n. 217; De Smet, n. 234; Esmein, vol. i, p. 203; Catholic Encyclopedia, Impediments.)

II. SPECIES

1.° PROHIBITIVE OR DIRIMENT IMPEDIMENTS

Can. 1036. § 1. Impedimentum impediens continet gravem prohibitionem contrahendi matrimonium; quod tamen irritum non redditur si, non obstante impedimento, contrahatur.

§ 2. Impedimentum dirimens et graviter prohibet matrimonium contrahendum, et impedit quominus valide contrahatur.

§ 3. Quanquam impedimentum ex una tantum parte se habet, matrimonium tamen reddit aut illicitum aut invalidum.

69. § 1. A prohibitive impediment renders a marriage gravely unlawful; but, if contracted, the marriage is not invalid.

§ 2. A diriment impediment both gravely forbids a marriage and prevents it from being contracted validly.

§ 3. Even when the impediment exists only on one side it renders marriage illicit or invalid.

1. Laws may have a twofold effect—to render an act illicit, or to render it invalid. When an act is invalid it is usually illicit also; but it may be unlawful without being therefore null. A man may be simply forbidden to use his power, or the power may be, as it were, taken away from him or so bound that he can not use it. The civil authority can do this in regard to civil contracts; the Church must be empowered to do it in regard to marriage, which, by being raised to the dignity of a sacrament, became a

religious contract, but did not lose its nature of contract.

2. An impediment may affect only one of the parties, as, for instance, a vow or the bond of a former marriage; but even then the contract will be unlawful or invalid for both parties. A person, although free himself, is not allowed to marry one who is not, and if one of the parties is incapable of making the contract, there can be no contract for the other.

2.° PUBLIC AND OCCULT IMPEDIMENTS

Can. 1037. Publicum censetur **impedimentum quod probari in foro externo** potest; **secus est occultum.**

70. An impediment is considered public when it can be proved in the external forum; otherwise it is occult.

Canonists explain this distinction in two senses. When it is a question of revalidating a marriage the impediment is considered public if it can be proved in open court, and two or three witnesses are sufficient for that. When it is a question of obtaining a dispensation from the S. Penitentiary, an impediment is considered occult if it is so both by its nature and in fact. It is altogether occult in fact if it is known only to the parties and the confessor; and simply occult if it is known only to a few persons (as, v.g., five or six in a small town), without any danger of its becoming more commonly known. The present law calls public those impediments that can be proved in open court, without any distinction; and it is, no doubt, in that sense that "public" and "occult" will have to be understood in the canons which follow. (Gasparri, n. 251; De Smet, n. 235.)

3.° OTHER IMPEDIMENTS

71. Impediments are further divided into those of the divine, natural and positive law; of the ecclesiastical and civil law; into absolute and relative, perpetual and temporary, certain and doubtful. The meaning of these terms required no definition.

III. AUTHORITY TO CONSTITUTE IMPEDIMENTS

1.° THE SUPREME ECCLESIASTICAL AUTHORITY

Can. 1038. § 1. Supremae tantum auctoritatis ecclesiasticae est authentice declarare quandonam jus divinum matrimonium impediat vel dirimat.

§ 2. Eidem supremae auctoritati privative jus est alia impedimenta matrimonium impedientia vel dirimentia pro baptizatis constituendi per modum legis sive universalis sive particularis.

72. § 1. It belongs to the supreme ecclesiastical authority alone to declare authentically when the divine law renders a marriage illicit or invalid.

§ 2. To the same supreme authority belongs exclusively the right to establish, for persons baptized, other impediments, prohibitive or diriment, by way of universal or particular law.

1. Which impediments are of natural or divine positive law, how far they extend, are questions which

canonists may discuss, but which only the Church, as God's representative and the official interpreter of His will, can decide. And, in the Church, although the Bishops share in the mission to teach, that decision is reserved to the supreme authority, because of its importance and for the sake of uniformity.

73. 2. To the impediments of natural or divine positive law the Church, as said above, may add others, prohibitive or diriment, which are binding on all Christians and on them alone, for the Church has authority over all men who by baptism have become members of Christ's flock; and she has repeatedly manifested her intention that her marriage laws should bind heretics also, unless otherwise stated.

Such power may be exercised by way of general law, of particular law, or of particular precept. To exercise it by way of general law requires universal jurisdiction over the whole Church, which belongs exclusively to the Sovereign Pontiff acting either alone or in a General Council. The power of establishing impediments by way of particular law may be within the limits of episcopal authority, as many admit; and Bishops seem to have exercised it in the past, but because of the necessity of preserving uniformity in this matter, it had long been reserved to the supreme authority, if not by an explicit declaration, at least implicitly and practically; now it is reserved explicitly.

2.° THE POWER OF ORDINARIES

Can. 1039. § 1. Ordinarii locorum omnibus in suo territorio actu commorantibus et suis subditis

etiam extra fines sui territorii vetare possunt matrimonia in casu peculiari, sed ad tempus tantum, justa de causa eaque perdurante.

§ 2. Vetito clausulam irritantem una Sedes Apostolica addere potest.

74. § 1. Ordinaries may forbid marriages to all persons in their territory and to their subjects also outside the territory, but only in a particular case, temporarily, and as long as a just cause lasts.

§ 2. An invalidating clause can not be added to that prohibition except by the Apostolic See.

75. It was considered as certain that a Bishop could not, even by way of particular precept, forbid a marriage under pain of nullity; and commonly held that he could forbid it under pain of sin. The law is now clear. That power the Bishops can exercise over their subjects, in or outside of the diocese; and also over strangers who are within the limits of their territory. *Locus regit actum.* As just causes for such prohibition canonists mention the danger of scandal, the fear of grave enmities, the probable existence of a hidden impediment, etc.

If a Bishop should forbid the celebration of marriages during the closed time, or after a certain hour in the evening, etc., he would not be establishing prohibitive impediments, but regulating what pertains to external discipline and worship.

IV. POWER OF ABROGATING, DEROGATING, OR DISPENSING FROM, IMPEDIMENTS

Can. 1040. Praeter Romanum Pontificem, nemo potest impedimenta juris ecclesiastici sive impedientia sive dirimentia abrogare, aut illis derogare; item nec in eisdem dispensare, nisi jure communi vel speciali indulto a Sede Apostolica haec potestas concessa fuerit.

76. No one except the Roman Pontiff has power to abolish entirely or partially ecclesiastical impediments whether prohibitive or diriment; neither has any one power to dispense from them unless it has been granted him by common law or by special Apostolic Indult.

The impediments of divine origin can not be abrogated or dispensed from by any human authority, but only interpreted. Canon Law deals here solely with ecclesiastical impediments.

1. *Abrogation and derogation.* To suppress completely or partially an impediment requires the same power as to constitute it. That power is possessed by, or reserved to, the Roman Pontiff alone. He exercises it from time to time, but as a rule does not delegate it.

77. 2. *Dispensations.* To dispense is to distribute or to administer. As in the administration or application of law it was found necessary to make some exceptions, to these exemptions granted to individual persons, for special reasons, by a prudent administrator, the name *dispensation* came to be applied. Again, when a law is violated, the common good may demand that obedience to it be insisted on, or that reparation be exacted, or, sometimes, that what has been done unlawfully be sanctioned and thus rendered legitimate. In this last case we have what has been called a *dispensation post factum.*

A. Former Discipline

78. (*a*) For a long time the dispensations granted by ecclesiastical authority were mostly *post factum,* although there are found, at a very early date, examples of dispensations regarding the future, *ad faciendum;* as, for instance, the permission granted by St. Gregory the Great to the newly converted Anglo-Saxons to marry within the forbidden degrees of consanguinity, beyond the fourth. There was no doubt about the power of dispensing, but it was preferred not to use it, and to enforce the law when it was possible.

(*b*) As long as dispensations were little more than acts of a prudent administration demanded by circumstances, they were freely granted by all whose mission it was to apply the law, that is, chiefly the Bishops. When gradually they had assumed a more and more legislative character and had grown more numerous, it became more clearly recognized that they presupposed in their author a corresponding legislative power, that an inferior could not dispense from the laws of a superior. By the end of the eleventh or the beginning of the twelfth century it was clearly defined that the Sovereign Pontiff and he alone could dispense from all impediments of the ecclesiastical law; the Bishops, of their own authority, could dispense only from those set up by particular law.

In practice, however, the application of this principle offered difficulties. The faithful continued to have recourse to their Ordinaries, and it was not possible to refer to Rome all the cases, particularly those of frequent occurrence and secondary importance or those calling for immediate settlement. The powers of Bishops had to be extended. Some canonists maintained that they would retain the dispensing power they had formerly exercised unless explicitly forbidden. This, however, was not commonly admitted. At the end of the fifteenth century it was generally taught that Bishops had power to dispense from impediments established by common law when there was a custom to that effect, in cases of necessity or great utility, when that power was granted by law explicitly or even implicitly, as when the text of the law mentioned dispensation as possible without stating from whom it should be obtained, and finally in doubtful cases. This had remained the common teaching to the present day. (Ferraris, Prompta Bibliotheca, Dispensatio.)

Some authors held also that pastors and confessors possessed by virtue of custom some power of dispensing, but others denied it as not proved. (Dictionnaire de Theologie Catholique, Dispenses; Thomassin, Ancienne et nouvelle discipline de l'Eglise, p. ii,

l. iii, c. xxiv-xxviii; Conférences ecclésiastiques de Paris, t. iii, p. 322; Esmein, vol. ii, p. 315.)

B. Present Discipline

79. In the present law it is clearly laid down that the Pope, and he alone, can dispense, of his own authority, from impediments of the ecclesiastical law. To others the Holy See can grant that power either by general law, in which case it is considered as ordinary power; or by special indult, in which case it is delegated power. Subsequent canons define the general conditions for dispensations, the dispensing power granted to Bishops and simple priests, and the manner of dispensing.

V. CUSTOM AND IMPEDIMENTS

Can. 1041. Consuetudo novum impedimentum inducens aut impedimentis exsistentibus contraria reprobatur.

80. Customs tending to introduce a new impediment or to abrogate those in existence are condemned.

1. Custom may introduce or abrogate ecclesiastical laws, provided it has the implicit or legal approval of the legislator. In times past it did establish and abrogate impediments both prohibiting and diriment. (Wernz, n. 60; Gasparri, nn. 273, 304.) In modern times it has introduced no new impediment strictly so called; the tendency is rather to disregard those already existing.

2. Has it abrogated any? The prohibiting impediments which remain for the whole Church could not be abrogated by custom, because of their close connection with the divine law. (Gasparri, n. 305.) For the impediment of mixed religion, in particular, it has been repeatedly declared that any custom against it was *corruptela juris,* and to be condemned.

Customs against purely ecclesiastical diriment impediments might more readily have had the consent of the legislator, but here again if the custom was universal it would be known and either approved or rejected; if it was a particular one, the importance attached to uniformity in marriage legislation would render the consent less probable, at least for ordinary customs of twenty or forty years. Moreover, the Church has for some impediments manifested unwillingness to approve their abrogation by custom, and she refuses likewise to sanction, even implicitly, disregard for her laws by heretics, and customs thereby established.

A decree of the Holy Office of March 11, 1868, admitted that the impediment of clandestinity had been abrogated in Japan by a prolonged contrary custom, but it did not admit that the same custom had abrogated other impediments, like consanguinity and affinity. (Gasparri, n. 308; Wernz, n. 60.) The same Congregation declared, July 6, 1892 (A. S. S., vol. xxv, p. 118), that no lapse of time is sufficient to abrogate the law of Trent because of non-observance by heretics. Hence, there remains no foundation for the opinion of some old canonists (Schmalzgruber, Jus Canonicum Universum, l. iv, t. 4, n. 99) that in Protestant countries like England and Germany baptized heretics were not bound any more by the diriment impediments which they had not observed for a long period of time. Among English Protestants, the impediments of consanguinity and affinity have been considered for several centuries as extending only to the second degree. Still, in the case of converts who had contracted marriage with such impediments in the third or fourth degrees, the Roman Congregations declare the marriage null.

81. 3. In future, there will be no more doubt. No custom, even if it should date from time immemorial, can be considered as in any sense approved by the legislator, and therefore has no value for introducing new impediments or abrogating those in existence. All the impediments sanctioned by the present legislation will henceforth be in force everywhere, and those alone, whatever may be the customs to the contrary. Exceptions to and changes in this matrimonial legislation will require a positive intervention of the supreme authority. Cases are now constantly referred to Rome from all parts of the Church; there is little room for custom, general or particular.

VI. CLASSIFICATION OF IMPEDIMENTS

Can. 1042. § 1. Impedimenta alia sunt gradus minoris, alia majoris.

§ 2. Impedimenta gradus minoris sunt:

1.° Consanguinitas in tertio gradu lineae collateralis;

2.° Affinitas in secundo gradu lineae collateralis;

3.° Publica honestas in secundo gradu;

4.° Cognatio spiritualis;

5.° Crimen ex adulterio cum promissione vel attentatione matrimonii etiam per civilem tantum actum.

§ 3. Impedimenta majoris gradus alia sunt omnia.

82. § 2. Impediments are divided into *major* and *minor*.

§ 2. The *minor* impediments are:

1.° Consanguinity in the third degree of the collateral line;

2.° Affinity in the second degree of the collateral line;

3.° Public decency in the second degree;

4.° Spiritual relationship;

5.° The impediment of crime arising from adultery with a promise of, or an attempt at, marriage, even by a merely civil contract.

§ 3. The *major* impediments are all the others.

The diriment impediments which are called *minor* annul marriage as well as those which are called *major;* the difference between them is seen particularly in relation to dispensations. Dispensations from minor impediments may be granted by the Undersecretary of the Congregation of Sacraments; dispensations from major impediments are granted only by the Prefect or the Secretary. Error in the petition does not vitiate a dispensation from a minor impediment; it may render invalid a dispensation from a major one. (Normae Peculiares, c. vii, art. 3, nn. 19, 20, 21; A. A. S.; vol. i, pp. 91-92.)

VII. POWERS OF DISPENSING GRANTED BY COMMON LAW TO ORDINARIES AND PRIESTS

83. Being granted by law, those powers are considered as ordinary or quasi-ordinary. They are substantially the same as those which Ordinaries enjoyed before, by custom, the tacit consent of the Holy See, or special decrees, with, however, some notable differences.

1.° IN CASES OF DANGER OF DEATH

A. Powers Granted to Ordinaries

Can. 1043. Urgente mortis periculo, locorum Ordinarii, ad consulendum conscientiae et, si casus ferat, legitimationi prolis, possunt tum super forma in matrimonii celebratione servanda, tum super omnibus et singulis impedimentis juris ecclesiastici, sive publicis sive occultis, etiam multiplicibus, exceptis impedimentis provenientibus ex sacro presbyteratus ordine et ex affinitate in linea recta, consummato matrimonio, dispensare proprios subditos ubique commorantes et omnes in proprio territorio actu degentes, remoto scandalo, et, si dispensatio concedatur super cultus disparitate aut mixta religione, praestitis consuetis cautionibus.

In danger of death, Ordinaries may, for the relief of conscience and, if the case demands it, for the legitimation of children, grant dispensation, both from the form of marriage, and from each and all of the ecclesiastical impediments, whether public or occult, even if there are several, excepting the impediment of priestly Orders and affinity in the direct line arising from consummated marriage, to their subjects, wherever they may be, and to all persons actually in their territory, care being taken to avoid scandal, and if dispensation is granted from the impediment of disparity of cult or mixed religion, the usual guarantees being exacted.

84. A decree of February 20, 1888, completed by one of December 13, 1899, had given extensive powers to Ordinaries in case of danger or death. The present canon renews and in several respects extends them.

1. The first condition for the exercise of those powers is that there be danger of death, not very grave, as the decree of 1888 had it, but really grave; it suffices that one of the parties be in danger, nor is it necessary that it should be the one who is directly affected by the impediment. (Holy Office, July 1, 1891.) The decree of 1888 spoke of danger of death from sickness; here no special cause is specified.

2. According to the decree of 1888 those faculties were to be used in favor of parties who lived in concubinage or were married only civilly. A decree of 1909 (A. A. S., vol. i, p. 468) demanded only that the marriage should be necessary, in general, for the relief of conscience, and, if the case demanded, for the legitimation of children. These are also the conditions laid down by this canon. Either of them was considered as sufficient. (De Smet, nn. 358, 369; Nouvelle Revue Théologique, Août, 1909, p. 467;

De Becker, De Sponsalibus et Matrimonio, Supplement, p. 49.)

3. When those conditions are fulfilled, the Ordinary can dispense from all impediments of the ecclesiastical law—excepting only two—even if they are public, even if there are several in the same case; and this is to be understood, no doubt, of several of the same or of different kinds. The prohibiting impediments are not excluded, as they were in previous decrees, and the power of dispensing from the form of marriage is expressly included.

4. Those powers the Ordinary can use in favor of his subjects, wherever they are, and in favor of all persons actually in his diocese or territory.

5. It is asked that proper care be taken to avoid the scandal that might arise from the incautious use of those extraordinary faculties. When dispensation is granted from the impediment of disparity of cult or mixed religion the usual promises have to be exacted even at the point of death.

B. Powers Granted to Priests

Can. 1044. In eisdem rerum adjunctis de quibus in can. 1043 et solum pro casibus in quibus ne loci quidem Ordinarius adiri possit, eadem dispensandi facultate pollet tum parochus, tum sacerdos qui matrimonio, ad normam can. 1098, n. 2, assistit, tum confessarius, sed hic pro foro interno in actu sacramentalis confessionis tantum.

85. Under the circumstances described in can. 1043, but only in those cases in which even the Ordinary of the place could not be reached, the same power of dispensing is enjoyed by the pastor and by the priest who assists at a marriage in accordance with the provision of can. 1098, n. 2, and by the confessor; but this last one in the internal forum only and in the act of sacramental confession.

1. When the Ordinary can not be reached in time, the faculties granted to him in the preceding canon are granted here, in the same circumstances and on the same conditions, to the pastor of the parties, and to the priest who, without being the pastor or the Ordinary or delegated by either of them, can validly assist at the marriage of the parties, in cases of danger of death. The confessor is given the same power, but he can use it only in the tribunal of penance and exclusively for the internal, penitential forum.

2. An assistant pastor or a priest who assists at a marriage as a delegate of the pastor or Ordinary does not possess those faculties, but they may be subdelegated to him, since they are quasi-ordinary. If the curate of the parish would assist at a marriage under circumstances under which any priest would assist validly, he, no doubt, would enjoy the same privileges as the priest who is a stranger.

3. Since the faculties of can. 1044 are the same as those of can. 1043, it may be inferred that, like the Ordinary, the pastor can exercise them in favor of his subjects wherever they are and in favor of all persons actually in his territory. (De Smet, n. 370.)

Can. 1046. Parochus aut sacerdos de quo in can. 1044, de concessa dispensatione pro foro externo Ordinarium loci statim certiorem faciat; eaque adnotetur in libro matrimoniorum.

86. The pastor or the priest mentioned in can. 1044 shall inform the Ordinary, at once, of the dispensation he has given in the external forum; and he shall enter it in the book of marriages.

For the sake of order, to prevent possible abuses of those extraordinary powers and to have legal proof of the validity of marriages, it is prescribed that the Ordinary be informed, without delay, of all the dispensations thus granted for the *forum externum,* and that a record be kept of them in the marriage register.

2.° IN CASES OF URGENT NECESSITY

Can. 1045. § 1. Possunt Ordinarii locorum, sub clausulis in fine can. 1043 statutis, dispensationem concedere super omnibus impedimentis de quibus in cit. can. 1043, quoties impedimentum detegatur, cum jam omnia sunt parata ad nuptias, nec matrimonium, sine probabili gravis mali periculo, differri possit usque dum a Sancta Sede dispensatio obtineatur.

§ 2. Haec facultas valeat quoque pro convalidatione matrimonii jam contracti, si idem periculum sit in mora nec tempus suppetat recurrendi ad Sanctam Sedem.

§ 3. In iisdem rerum adjunctis, eadem facultate gaudeant omnes de quibus in can. 1044, sed solum pro casibus occultis in quibus ne loci quidem Ordin-

arius adiri possit, vel nonnisi cum periculo violationis secreti.

87. § 1. Ordinaries can, under the conditions laid down at the end of can. 1043, dispense from all the impediments mentioned in the same canon, every time the impediment is discovered when everything is ready for the wedding, and the marriage can not, without probable danger of grave inconvenience, be delayed until a dispensation could be obtained from the Holy See.

§ 2. The same faculties hold good for the revalidation of a marriage already contracted, if there is the same danger in delay and there is no time to have recourse to the Holy See.

§ 3. In the same circumstances, the same faculties are enjoyed by all those mentioned in can. 1044, but only for the occult cases in which it would not be possible to have recourse even to the Ordinary of the place, or it could not be done without danger of violating the secret.

88. 1. The urgent necessity for which these faculties are granted is the one described here, which canonists have called the *casus perplexus*—when all is ready for the ceremony, an impediment is discovered, and the marriage can not be put off long enough to have recourse to the Holy See.

The inconvenience from the delay ought to be a grave one, but it suffices that there be a probable danger of such an inconvenience. Under those circumstances the Ordinary has the power again to dispense from all impediments of the ecclesiastical law, except two, as in cases of danger of death.

2. Ordinaries have the same faculties for the revalidation of a marriage already contracted, if the same condition of necessity is present; only here the necessity arises in a different manner and may result from different causes. Thus there may be a serious danger of scandal, disgrace, or other grave inconvenience if the parties were separated, and on the other hand there may be an equally grave danger of incontinence if they were asked to live together as brother and sister during the time required for recourse to Rome. By marriage contracted is meant here one which has the "appearance of marriage," that is, which has been contracted invalidly, but with the required formalities. Regularly the Church does not recognize the "appearance of marriage" in a merely civil union, still less in concubinage. (De Smet n. 359; Putzer, Commentarium in Facultates Apostolicas, n. 16; Wernz, n. 29.)

3. The faculties granted to pastors, confessors, or priests for performing a marriage in case of necessity are limited to occult cases, and even for those recourse should be had to the Ordinary, if time permits—and if it can be done without revealing the impediment or violating any secret. Even with those restrictions, these faculties will facilitate the solution of very embarrassing cases for which there was no provision in the former legislation. They can be used also, under the proper conditions, for

the revalidation of marriages already contracted.[1]

89. *Doubtful impediments.* No special faculties are granted to dispense from them, for it is a general principle (can. 14) that when there is a doubt of right the law is not binding, if there is a doubt of fact the Ordinary can dispense in those matters in which the Holy See usually dispenses.

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[1] More extensive faculties had been obtained by Ordinaries in various countries; a decree of the Consistorial Congregation of April 25, 1918, withdraws most of them and grants, instead, the following ones:

(*a*) The Ordinaries of America, the Philippine Islands, East Indies, Central and South Africa may, for five years, beginning May 18 of the current year, dispense from the minor impediments enumerated in can. 1042; all rules about dispensations laid down in that chapter of the Code being observed.

They may likewise revalidate *in radice* marriages null on account of minor impediments; taking care that the prescriptions contained in the Code, bk. III, Tit. vii, c. xi, be complied with, and that the party conscious of the impediment be informed of the effect of the dispensation.

(*b*) The same Ordinaries may also dispense, for five years, from major impediments, whether public or occult, even if there are several of them, provided they be of ecclesiastical institution (excepting those which arise from priestly Orders or from affinity in the direct line produced by the consummation of marriage), and from the prohibiting impediment of mixed religion; when, the petition for a dispensation having been sent to the Holy See, the case becomes urgent before the answer is received.

In granting these dispensations, Ordinaries must always bear in mind the ordinances of the Code, bk. III, tit. vii, c. 2, 3, 4, regarding impediments in general and in particular; without forgetting the clauses usually added to permissions for marriages with Mohammedans or Hebrews.

(*c*) The Ordinaries of France, Great Britain, Germany, Austria, and Poland enjoy the same faculties (*a* and *b*), for the duration of the war, whenever it is foreseen that recourse to the Holy See will be difficult or impossible at least for a month. (A. A. Sedis, May 1, 1918; Il Monitore Ecclesiastico, 15 Maggio, p. 140; Le Canoniste Contemporain, Mai-Juin, 1918, p. 239.)

VIII. DISPENSATIONS FOR THE INTERNAL FORUM

Can. 1047. Nisi aliud ferat S. Poenitentiariae rescriptum, dispensatio in foro interno non sacramentali concessa super impedimento occulto, adnotetur in libro diligenter in secreto Curiae archivo de quo in can. 379 asservando, nec alia dispensatio pro foro externo est necessaria, etsi postea occultum impedimentum publicum evaserit; sed est necessaria, si dispensatio concessa fuerat tantum in foro interno sacramentali.

90. Unless the rescript of the Sacred Penitentiary ordains otherwise, dispensations from occult impediments for the internal, non-sacramental forum are to be recorded in a book kept in the secret archives of the diocese, of which can. 379 speaks, and no other dispensation is needed for the external forum although the impediment becomes afterwards public; but one is needed if the dispensation has been granted only for the internal sacramental forum.

1. A dispensation granted for the internal forum only does not remove the impediment in the eyes of the public or of the external government of the Church; therefore it is good only for occult impediments. If the impediment which was occult becomes public, regularly another dispensation for the external forum would be necessary. But the present law, to simplify matters, now ordains that when such a dispensation is granted for the internal forum, provided it be not in connection with sacramental con-

fession, a record of it be kept, so that it can serve for the external forum also in case the impediment becomes public.

2. That dispensation is to remain secret as long as the impediment remains occult, and for that reason the record is to be preserved in a special book, which is to be kept, not in the parochial but in the diocesan secret archives. In some cases, for special reasons, the Sacred Penitentiary, which grants the faculties for the dispensation, may direct that no record of it be kept. None is ever kept when the dispensation is granted in connection with the administration of the sacrament of Penance. In this last case, should the impediment become public afterward, a new dispensation would be required.

IX. INTERVENTION OF THE HOLY SEE

Can. 1048. Si petitio dispensationis ad Sanctam Sedem missa sit, Ordinarii locorum suis facultatibus, si quas habeant, ne utantur, nisi ad normam can. 204, § 2.

91. If application for a dispensation has been made to the Holy See, Ordinaries should not use the powers they might have, except in accordance with the prescriptions of can. 204, § 2.

It is a general principle that, through seizure by the superior, the inferior loses the power he might have in the case, unless there would be a grave and urgent cause for him to act.

X. DISPENSATION FROM SEVERAL IMPEDIMENTS IN THE SAME CASE

Can. 1049. § 1. In matrimoniis sive contractis sive contrahendis, qui gaudet indulto generali dispensandi super certo quodam impedimento, potest, nisi in ipso indulto aliud expresse praescribatur, super eo dispensare etiamsi idem impedimentum multiplex sit.

§ 2. Qui habet indultum generale dispensandi super pluribus diversae speciei impedimentis, sive dirimentibus sive impedientibus, potest dispensare super iisdem impedimentis, etiam publicis, in uno eodemque casu occurrentibus.

92. § 1. Whether it is question of marriages already contracted or of marriages to be contracted, he who has a general indult to dispense from a certain impediment can dispense from it also when it is multiplex, unless there be something expressly to the contrary in the indult.

§ 2. He who has a general indult to dispense from several impediments of a different kind, either diriment or prohibitive, can dispense simultaneously from them all when they occur in the same case, even if they are public.

1. Under the former discipline one who dispensed in virtue of ordinary powers could dispense simultaneously from several impediments as well as separately. But if he acted in virtue of an indult, unless he had received special faculties, which were called faculties for cumulating, he could not dispense the same person from several impediments simultaneously, at least if they were of a different kind, even though he had powers to dispense from every one of them in particular. Thus an Ordinary having faculties to dispense from impediments of consanguinity and of mixed religion could not use his faculties when the two impediments occurred in the same case, unless he had the *indultum cumulandi.*

2. The rule laid down here is that whether there are in the same case several impediments of the same or of different kinds, as, for example, an impediment of consanguinity which is multiplied or an impediment of affinity and one of mixed religion, whether the impediments are diriment or prohibitive, public or occult, he who has a general indult to dispense from every one of them separately can dispense also simultaneously from all of them. This, however, would not apply if one would dispense by virtue of faculties granted only for a particular case, nor if in the general indult it was explicitly stated that the various faculties can be used only for each impediment separately.

XI. DISPENSATION WHEN ONE OF THE IMPEDIMENTS IS RESERVED TO THE HOLY SEE

Can. 1050. Si quando cum impedimento seu impedimentis publicis super quibus ex indulto dispensare quis potest, concurrat aliud impedimentum super quo dispensare nequeat, pro omnibus Sedes Apostolica adiri debet; si tamen impedimentum seu

impedimenta super quibus dispensare potest, comperiantur post impetratam a Sancta Sede dispensationem, suis facultatibus uti poterit.

93. If, together with one or several public impediments from which one can dispense in virtue of an indult, there occurs another from which he can not dispense, recourse must be had to the Holy See for all of them. If, however, the impediment or impediments from which he can dispense are discovered by the Ordinary after petitioning the Holy See for the dispensation, he will be allowed to use his faculties.

The meaning of this rule and the reason for it are sufficiently clear. It will be noticed that it applies only to impediments that are public and dispensation from which could be granted by virtue of an indult. If the Bishop can dispense by virtue of his ordinary power, he may do so even if there be another impediment in the case from which the Holy See alone can dispense. If the impediment from which he can dispense is not a public one, he may likewise use his ordinary or delegated powers. Recourse to the Holy See for all is obligatory when together with a public impediment, which the Bishop could dispense from by virtue of an indult there is another, occult or public, no distinction is made here, which is reserved to the Pope.

XII. LEGITIMATION OF CHILDREN

Can. 1051. Per dispensationem super impedimento dirimente concessam sive ex potestate ordin-

aria, sive ex potestate delegata per indultum generale, non vero per rescriptum in casibus particularibus, conceditur quoque eo ipso legitimatio prolis, si qua ex iis cum quibus dispensatur jam nata vel concepta fuerit, excepta tamen adulterina et sacrilega.

94. By a dispensation from a diriment impediment, granted in virtue of ordinary power or of power delegated by general indult, not by rescript given for particular cases, is granted at the same time the legitimation of the offspring if any was conceived or born to the dispensed parties, provided it be not adulterine or sacrilegious.

1. Illegitimate children are those born out of real or putative wedlock. They are called, in canon law, *natural,* if at the time of their conception or birth, or between these two terms, there could have been a valid marriage between the parents. They are called *spurious* if at that time there existed a diriment impediment to the marriage. If the impediment was that of a previous marriage they are *adulterine;* if that of Sacred Orders or solemn religious vow, they are *sacrilegious;* if consanguinity or affinity, they are *incestuous.*

2. Canon law, at least since the time of Alexander III, has accepted the principle of the Roman law, that children are legitimated by the subsequent marriage of the parents. But this applies only to natural children, in the sense defined above. For the spurious a dispensation is required.

It has been for a long time an accepted rule that a general power of dispensing implies also power of legitimating the children, excepting such as are adulterine or sacrilegious. (S. Poenit, July 1, 1859.) Rescripts granted for particular cases contain that power only when expressly mentioned.

Formerly the legitimation had to be pronounced formally. This does not seem to be required by the present law, since legitimation follows *ipso facto* the dispensation.

XIII. ERROR IN DISPENSATIONS FROM CONSANGUINITY OR AFFINITY

Can. 1052. Dispensatio ab impedimento consanguinitatis vel affinitatis, concessa in aliquo impedimenti gradu, valet, licet in petitione vel in concessione error circa gradum irrepserit, dummodo gradus revera exsistens sit inferior, aut licet reticitum fuerit aliud impedimentum ejusdem speciei in aequali vel inferiore gradu.

95. A dispensation from an impediment of consanguinity or affinity, granted for a certain degree, is valid, even though in the petition or concession there be an error about the degree, provided that the degree really existing and which should have been mentioned be inferior to the one which was mentioned. It is valid also although an impediment has been omitted, provided it be of the same species and of an inferior or equal degree.

Thus, if the dispensation was asked or granted for an impediment of consanguinity in the second degree of the collateral line and in reality it was in the third, the dispensation is valid. It is likewise valid if the dispensation was granted for one impediment of consanguinity in the second degree of the collateral line and there were two, one in the second, the other in the third, or even in the second degree. But the dispensation would not be valid if it had been granted for an impediment of consanguinity and there was also one of affinity which was not mentioned in the petition.

This canon is concerned only with dispensations from the impediments of consanguinity or affinity.

XIV. IMPLIED DISPENSATION FROM AN IMPEDIMENT OF CRIME

Can. 1053. Data a Sancta Sede dispensatio super matrimonio rato et non consummato vel facta permissio transitus ad alias nuptias ob praesumptam conjugis mortem, secumfert semper dispensationem ab impedimento proveniente ex adulterio cum promissione vel attentatione matrimonii, si qua opus sit, minime vero dispensationem ab impedimento de quo in can. 1075, nn. 2, 3.

96. A dispensation granted by the Holy See from marriage ratified and not consummated, or permission given to contract a new marriage because of the presumed death of the other spouse, always imply a dispensation from the impediment arising from adultery with promise of, or attempt at, marriage, if there be need of it; but not dispensation from the impediment of can. 1075, n. 2, 3; that is, from the other two impediments of crime which arise from adultery and conjugicide or conjugicide alone.

97. 1. In 1912 it was represented to the Congregation of the Sacraments that frequently parties would obtain a dispensation from a marriage ratified and not consummated without obtaining also the dispensation from the impediment of crime which they had incurred by contracting a civil marriage before the first one was dissolved, or again, parties who have contracted a civil marriage before the death of the other spouse is clearly established, obtain afterward from the Holy See, for the satisfaction of their conscience, a declaration of their freedom and permission to marry, but without thinking of the impediment of crime which they have incurred if the first marriage was not dissolved when the second one was attempted, the result being that those marriages are not revalidated, but remain null. To remedy those evils and prevent their recurrence it was decreed, June 3, 1912, with the approval of the Sovereign Pontiff, that for the past all marriages that had remained null for the above reasons were revalidated, and for the future the dispensation and permission to marry granted by the Holy See in such cases should always be considered as containing the dispensation from the impediment of crime. The present canon reproduces that part of the decree which concerns the future.

98. 2. It should be noted (*a*) that it has reference only to dispensations or permissions to marry granted by the Holy See; (*b*) that it applies exclusively to the impediment of crime arising from adultery and promised or attempted marriage, not to the one arising from conjugicide; (*c*) that the dispensation from crime is implied only in a dispensation from a non-consummated marriage or in the permission to contract a new marriage, not in any other dispensation, nor in a declaration of nullity. (Nouvelle Revue Théologique, Nov., 1912.)

XV. OBREPTION AND SUBREPTION IN DISPENSATIONS

Can. 1054. Dispensatio a minore impedimento concessa, nullo sive obreptionis sive subreptionis vitio irritatur, etsi unica causa finalis in precibus exposita falsa fuerit.

99. A dispensation from a minor impediment is not vitiated by obreption or subreption, even though the only final cause alleged be false.

1. There is obreption in a petition for dispensation when it contains false statements; subreption when something which should have been expressed is omitted.

2. Formerly the rule was that any error in the *supplica,* obreption or subreption, if due to bad faith, always rendered the dispensation invalid, even when the error was of minor importance, provided it would have some bearing on the dispensation.

If the obreption or subreption were committed in good faith, the dispensation was invalid if the error was substantial—that is, bearing on the impediment itself, or on a necessary circumstance, or on the final, determining cause. It was valid if the error was only accidental, affecting circumstances required only for the lawfulness, or an impulsive, not final cause.

100. 3. In the special rules for the Congregation of the Sacraments, published September 29, 1908 (A. A. S., vol. i, p. 90), a distinction was made between impediments which were called *minor* and those which were called *major;* and it was ordained that henceforth dispensations granted by the Holy See from the minor impediments would have the same force as if they were granted *ex motu proprio et certa scientia,* and would not be liable to challenge on the ground of obreption or subreption.

The present law retains that distinction and lays down the same rule; no error or deceit, in the *supplica,* whether due to bad faith or not, whether substantial or accidental, will annul a dispensation from a minor impediment; the dispensation must be granted by the Holy See.

101. Note: In can. 66, it is laid down as a general rule that power of dispensing includes power of absolving from censures which would be an obstacle to the efficacy of the dispensation. Persons who have incurred censures or other ecclesiastical penalties are not entitled to the Church's favors and should be absolved before receiving them. This, formerly, was necessary for the validity of the favor. Since the reorganization of the Curia it is generally required only for the licitness. The *Normæ Peculiares,* c. iii, art. i, n. 6, provide that "favors and dispensations of every kind granted by the Holy See are valid and legitimate, even for those under censure, except for such as are excommunicated by name or suspended *a divinis* by the Holy See." (De Smet, n. 393.) The absolution from censures should, however, be given before dispensing, as in the sacrament of Penance it precedes absolution from sin. The new law supposes that it will be given, only it ordains that the power of giving it is always contained in the power of dispensing. Those absolutions are called *ad effectum,* because their efficacy does not go beyond what is necessary to obtain a certain effect.

XIV. EXECUTION OF DISPENSATIONS BY ORDINARIES

Can. 1055. Dispensationes super publicis impedimentis Ordinario oratorum commissas, exsequatur Ordinarius qui litteras testimoniales dedit vel preces transmisit ad Sedem Apostolicam, etiamsi sponsi, quo tempore exsecutioni danda est dispensatio, relicto illius dioecesis domicilio aut quasi-domicilio, in aliam dioecesim discesserint non amplius reversuri, monito tamen Ordinario loci in quo matrimonium contrahere cupiunt.

102. Dispensations from public impediments, entrusted to the Ordinary of the petitioners, shall be executed by that Ordinary who has given testimonial letters or who has forwarded the petition to the Holy See, even if the parties, at the time the dispensation is to be executed, have left their domicile or quasi-domicile in his diocese and gone to another diocese without intention of returning, due notification being given to the Ordinary of the place in which the marriage is to be celebrated. (Holy Office, February 20, 1888.)

103. 1. Dispensations are said to be granted in gracious form, *forma gratiosa,* when they are applied to the petitioners directly by him who grants them; they are in commissorial form, *forma commissoria,* when he who grants them entrusts to another their execution and application to the parties.

Apostolic dispensations are generally in the commissory form, except, at times, the dispensations *in radice.* Bishops usually dispense in the gracious form; they could not use the commissory form when they act in virtue of delegated powers which they are not allowed to subdelegate. The question here is about Apostolic dispensations.

2. When dispensations are for the internal forum their execution is usually entrusted now to the pastor of the petitioner or to the confessor, chosen or to be chosen by him and approved by the Ordinary. If the petition had been sent to the S. Pœnitentiaria through the Ordinary, the dispensation would be directed to him with instructions to forward it unopened to the confessor or pastor.

104. 3. Apostolic dispensations from public impediments are to be committed for execution to the Ordinary of the petitioners or the Ordinary of the place, according to the decree of February 20, 1888, and the present canon, which is taken from it almost literally. "Ordinary" means, as is defined in that document, not only the Bishop but also the Vicar-General or the Official and the Vicar-Capitular or the Administrator. The Ordinary of the petitioners is the one through whom the request has been made, who has endorsed the petition or sent it to Rome.

Usually application for dispensation is made through the Ordinary of the place of domicile or quasi-domicile, but it may be made also through the Ordinary of the place of origin. Again, it may be the Ordinary of either party, although it is proper that it be that of the bride, or that of the Catholic party, if the impediment is an absolute one and affects him directly. (De Smet, n. 379.) The faithful may also write to Rome themselves. In the *Normæ Communes,* c. x, n. 1, it is stated that: "Each of the faithful has free access to the Congregations of the Holy See, the proper form being duly observed, and his business can be dealt with directly."

The Ordinary can execute the dispensation even if in the meantime the parties have lost their domicile or quasi-domicile in his territory; only he should notify the Ordinary of the place where the marriage is to be celebrated. The decree of 1888 added "if he thinks it expedient to do so." Our canon does not contain that clause. According to the same decree, the Ordinary was to execute the dispensation himself; he was allowed to subdelegate only another Ordinary, particularly the one in whose territory the parties actually lived. He could not subdelegate the pastor, except for the verification of the facts and the examination of the petitioners unless he had received special faculties. The present law has not those restrictions.

XVII. TAXES AND EXPENSES

Can. 1056. Excepta modica aliqua praestatione ex titulo expensarum cancellariae in dispensationibus pro non pauperibus, locorum Ordinarii eorumve officiales, reprobata quavis contraria consuetudine, nequeunt, occasione concessae dispensationis, emolumentum ullum exigere, nisi haec facultas a Sancta Sede expresse eis data fuerit; et si exegerint, tenentur ad restitutionem.

105. Unless the permission has been expressly granted by the Holy See, the local Ordinaries or their officials, all customs to the contrary notwithstanding, can not at the occasion of the granting of a dispensation, exact any compensation; and, if they have exacted any, they are bound to make restitution; excepting, for dispensations granted to those who are not poor, a small compensation for chancery expenses.

106. 1. The Council of Trent decreed (Sess. xxiv, c. 5, De Reformatione Mat.) that marriage dispensations, if granted at all, should be granted gratuitously. The same rule has been laid down repeatedly in instructions of Popes and Congregations and in particular indults. The Congregation de Propaganda Fide reminds the Fathers of the Second Plenary Council of Baltimore of the law which forbids demanding any compensation for marriage dispensations, on any title whatsoever, except when the Holy See says to impose some alms on the petitioners. The S. Pœnitentiaria, renewing that prohibition in a decree of April 26, 1861, allows only a moderate tax as a compensation for chancery work unless a special indult has been obtained. The Congregation of the Council, June 10, 1896, would seem to make a little concession. It permits a tax for the dispensations provided a uniform rule be adopted by the Bishops of the province and it be submitted to the Congregation as an experiment. In practice there was a great variety of customs more or less in conformity with the above directions. (De Smet, n. 386; De Becker, p. 333.)

107. 2. This canon abrogates all those customs. Not only should there be no charge for the dispensation itself, but the granting of it should not be for Ordinaries or their officials an occasion for exacting a remuneration as a compensation for work done or under any other pretext. Any money thus obtained would have to be restored. All that is permitted is a small retribution for chancery expenses, and the poor are dispensed from it. No doubt postal and agency expenses are to be defrayed by the petitioners. But "the tax for the support of the officials and for the various expenses connected with the chancery office is legitimate only if it remains within the limits just defined." It is the practice of the Holy See, in certain cases, to impose upon those who are not poor what is called a *componenda* (alms), which it is permissible to apply to pious works, and which serves as a reparation for the non-observance of the law. Ordinaries may follow the same custom, but they need for this, as for any departure from the present rule, a special authorization from the Holy See.

XVIII. MENTION OF DELEGATION WHEN DISPENSING

Can. 1057. Qui ex potestate a Sede Apostolica delegata dispensationem concedunt, in eadem expressam pontificii indulti mentionem faciant.

108. Those who dispense in virtue of a delegation from the Holy See shall mention the Apostolic Indult when using it.

The delegate acts, not in his own name, but in the name of the principal, and he is asked to declare by whose power he is dispensing, in order that the rights of the superior be maintained. This is required only for the licitness, not for the validity, of the act.

CHAPTER III

PROHIBITIVE IMPEDIMENTS[1]

109. Ancient canonists speak of several prohibitive impediments which have been abrogated long since, like catechism, various crimes, public penance. Recent authors usually count eight: The Church's prohibition; forbidden time; vow; betrothal; mixed religion; opposition of parents; unworthiness by reason of sin, censure, or ignorance; omission of banns. Several of these are not impediments in the strict sense; betrothal does not produce any canonical impediment any more. The new law has only: Vow; legal relationship, where it is an impediment by civil law; mixed religion; unworthiness resulting from apostasy, affiliation with condemned societies, censure, or public sin.

I. VOW

Can. 1058. § 1. Matrimonium impedit votum simplex virginitatis, castitatis perfectae, non nubendi, suscipiendi ordines sacros et amplectendi statum religiosum.

§ 2. Nullum votum simplex irritat matrimonium, nisi irritatio speciali Sedis Apostolicae praescripto pro aliquibus statuta fuerit.

110. § 1. Marriage is rendered illicit by the simple vow not to marry, the vow of virginity and perpetual chastity, the vow to receive

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[1] Tanquerey, n. 1015 ff.

Sacred Orders or to embrace the religious life.

§ 2. No simple vow renders marriage invalid except by special enactment of the Holy See.

1. In relation to marriage, vows begin to be distinguished, by the end of the fourth century, into *private* and *public*. They are public by the mere fact that they are made known by the putting on of the religious habit and, for women, of the veil. In the twelfth century a somewhat different distinction was introduced by the school of Bologna and then received in canon law: Vows were *simple* or *solemn*. Whatever be the real foundation for that distinction, about which there are several opinions, only those vows are now and have been for a long time recognized as solemn which are taken in a solemn religious profession made in an Order strictly so called. Vows made in the world, in a Religious Congregation, or in an Order strictly so called but previous to the solemn profession or in place of it, are all simple vows.

111. 2. Simple vows, such as those enumerated in this canon, do not regularly render marriage invalid, but they render it unlawful, because they are absolutely or morally incompatible with the married state or with full married life.

The Holy See can, however, attach annulling power to certain simple vows. It was done by Gregory XIII in the Constitution *Ascendente Domino* of May 25, 1584, for the simple vows taken by the scholastics of the Society of Jesus after two years' novitiate. They can invalidate marriage as long as the scholastics remain members of the Society. (De Smet, n. 284; Catholic Encyclopedia, Religious Life, Vow.) Sanchez and others maintained that the vow taken in the world by a wife whose husband has received Sacred Orders invalidates marriage also. If there was any law to that effect it must have been abrogated by Boniface VIII in Cap. un. de Voto, lib. iii, tit. 15, in Sexto. In the absence of any clear text an exception to the general rule is not to be presumed. (Ojetti, Synopsis, vol. ii, n. 1858, Divortium.)

II. LEGAL RELATIONSHIP

Can. 1059. In iis regionibus ubi lege civili legalis cognatio, ex adoptione orta, nuptias reddit illicitas, jure quoque canonico matrimonium illicitum est.

112. In those countries in which relationship resulting from legal adoption is a prohibitive impediment by civil law, it is so also by canon law. (Cf. can. 1080.)

III. MIXED RELIGION

PRELIMINARY NOTIONS

113. (*a*) The impediment of mixed religion as distinct from that of disparity of cult arises from diversity of religious profession and exists between two parties, one of whom is a Catholic, the other a baptized non-Catholic, whether a heretic or a schismatic.

(*b*) By *heretic* or *schismatic* is to be understood here one who is affiliated with some heretical or schismatic sect, not one who would simply have fallen into some heresy secretly, or even one who would have publicly renounced the Faith without joining any sect. This was the interpretation given by the Holy Office in the decree of January 30, 1867, and others, and it is retained by the present legislation, as can. 1065 clearly implies. In other matters, as when it was question of the law of clandestinity, public apostates were assimilated to heretics (Gasparri, n. 971; Answer of Holy Office to the Bishop of Monterey, Oct. 15, 1865; Gasparri, n. 481); likewise when it is question of incurring the irregularity *ex hæresi* (Gasparri, De Sacra Ordinatione, n. 464). Under the decree *Ne temere,* art. 11, and under the present legislation, can. 1099, fallen-away Catholics, even after joining a heretical set, are still considered as Catholics, and obliged to observe the form of marriage; but this is a special rule, made for this case, as can. 1099 shows, and is implied in can. 1065.

(*c*) Who are to be considered as affiliated with a sect? The Holy Office, in an answer of April 6, 1859, enumerates the following: (1) those who, having been baptized in the Catholic Church, have been brought up in heresy before the age of seven and still profess it; (2) those who have been brought up by heretics rather than in heresy; (3) those who have fallen into the hands of heretics in their infancy; (4) those born and baptized in heresy. (De Smet, n. 251; Collect., n. 1174.)

1.° EXISTENCE OF THE IMPEDIMENT OF MIXED RELIGION

Can. 1060. Severissime Ecclesia ubique prohibet ne matrimonium ineatur inter duas personas bap-

tizatas, quarum altera sit catholica, altera vero sectae haereticae seu schismaticae adscripta; quod si adsit perversionis periculum conjugis catholici et prolis, conjugium ipsa etiam lege divina vetatur.

114. The Church most severely forbids everywhere marriages between two baptized persons one of whom is a Catholic, the other a member of a heretical or schismatic sect; if there is danger of perversion for the Catholic party or the offspring, the marriage is forbidden also by divine law.

115. 1. From the days of St. John and St. Paul, who forbade association with heretics (2 John 10, 11; 1 Cor. v. 11; Tit. iii, 10), the Church has always forbidden mixed marriages. The first Council of which we possess the disciplinary decrees (Elvira, 300) forbids marriage with heretics unless they are willing to enter the Church. Similar enactments are found in the Councils of Laodicea (343-381, c. 10, 31); Hippo (393, c. 16), and others. In the Council in Trullo (692), marriages with heretics are pronounced null, but that law was never universally received in the West. (Esmein, vol. i, p. 218.) In the Middle Ages there were few heretics, and they were dealt with so severely that the question of mixed marriages was seldom raised. (Boniface VIII, cap. 14, De Hæret, v. 2, in Sext.; Council of Posen, 1309, c. 8; Synod of Pressburg.) With the Reformation it became more practical. (Wernz, n. 576; De Smet, n. 258.) In the sixteenth century many Councils and synods in various parts of Europe renew the ancient prohibitions. Popes condemn marriages with heretics in the strongest terms, particularly Urban VIII, Clement XI, Benedict XIV, Pius IX, and Leo XIII. (Tanquerey, De Matrimonio, n. 1027; Wernz, n. 576.)

116. 2. The principal reason for that prohibition is the danger of perversion for the Catholic party and for the children. As long as the danger remains somewhat proximate the divine law itself condemns a mixed marriage, and no power on earth can give a dispensation. But even when the danger has become remote and the requirements of the divine law are, strictly speaking, satisfied, there is still the ecclesiastical law, which forbids mixed marriages under all circumstances and which is binding in all cases, because it is based on a presumption of general danger, not simply of fact. A mixed marriage is never without some danger or some other inconveniences.

3. Neither can custom prevail against that law. The contrary opinion of some theologians of the seventeenth and eighteenth centuries was condemned by the Sovereign Pontiffs. "Although for a long time past the opinion had spread that mixed marriages may be licitly contracted without the dispensation of the Holy See, that opinion, whatever be the custom to the contrary, can not be tolerated." (Holy Office, January 3, 1871; Collect., n. 1434 ad 2^{um}; Wernz, n. 576.) It is declared that Catholics who contract marriage with heretics without dispensation are guilty of grave sin. Pastors are forbidden to assist at such marriages, except in a few extraordinary cases, when passive assistance is tolerated to

avoid greater evils; as when the civil law compels pastors to assist. (Inst. of Card. Lambruschini to the Bishops of Hungary, April 30, 1841; Pius VIII to the Bishops of the province of Cologne, March 25, 1830; Instruction of Card. Bernetti to the Bishops of Bavaria, September 12, 1834; Gasparri, n. 347.) That assistance is merely passive and does not mean approval or consent, for the marriages remain illicit.

2.° DISPENSATIONS FROM THE IMPEDIMENT

Can. 1061. § 1. Ecclesia super impedimento mixtae religionis non dispensat, nisi:

1.° Urgeant justae ac graves causae;

2.° Cautionem praestiterit conjux acatholicus de amovendo a conjuge catholico perversionis periculo, et uterque conjux de universa prole catholice tantum baptizanda et educanda;

3.° Moralis habeatur certitudo de cautionum implemento.

§ 2. Cautiones regulariter in scriptis exigantur.

117. § 1. The Church grants no dispensation from the impediment of mixed religion, unless:

1.° There be just and grave causes;

2.° The non-Catholic party give guarantees that the danger of perversion for the Catholic party will be removed, and both parties promise that all the children will be baptized and brought up only in the Catholic faith;

3.° There be a moral certainty that the promises will be fulfilled.

§ 2. Regularly the promises should be demanded in writing.

1. Once the danger of perversion is removed, and no other serious inconveniences are feared, there remains only the ecclesiastical impediment from which the Church can and does dispense. At first it was only on condition that the heretic would enter the Church. Benedict XIV testifies that this was the practice of his predecessor, Innocent X. In the seventeenth century dispensations began to be granted without that condition, but rarely and only for reasons of common good. In the course of the eighteenth and nineteenth centuries they became more common, particularly in some countries.

118. 2. The power of dispensing belongs to the Sovereign Pontiff alone and to Bishops only by delegation. Until the eighteenth century it was very seldom delegated. At the present time, in countries where heretics are few, Bishops usually receive faculties for only a limited number of cases (10, 15, 50) at a time, and they are to use them only when it is not possible to have recourse to the Holy See. In countries where heretics are more numerous, as in the United States, faculties were granted without those limitations but for only a certain number of years (*ad triennium, ad quinquennium*), and Ordinaries had to report the number of cases in which they had used them. Moreover, the Holy See asked from time to time (v.g., in 1888, 1913), for a more complete report stating, as far as can be ascertained, how many mixed marriages were contracted in the diocese within a certain period of time, say the previous ten years; how many with, how many without, the necessary guarantees and dispensation; what had been their results, etc. (Circular of Card. Rampolla, Secretary of the Holy Office, August 13, 1913.)

A recent decree of the Consistorial Cong. withdrew those general faculties, April 25, 1918. Cases have to be referred to Rome; if, meanwhile, an urgent necessity arises, the dispensation can be granted. (A. A. S., May, 1918.)

119. 3. CONDITIONS FOR THE DISPENSATION: (A) *Just and grave causes.* A dispensation granted without cause by delegated power would be null. What causes will be sufficient? At present, reasons of a private character are accepted, particularly in countries where the Catholics are relatively few. The fear lest the parties should go and be married by the civil officer may be a sufficient reason for the Ordinary to grant the dispensation, but the parties themselves are guilty of grave sin for obtaining it by such means. (Lehmkuhl, casus n. 911.)

120. (B) *Guarantees.* (*a*) *Their object.* The divine law forbids mixed marriages as long as there is danger of perversion for the Catholic party or the offspring. The Church, before granting a dispensation, demands that the danger be removed and moreover, that guarantees to that effect be given under the form of explicit promises made before a representative of the ecclesiastical authority. A mere hope or even a moral certainty founded only on the good will of the parties is not sufficient. (S. C. Inq. ad Episcopos Hungariæ, July 21, 1880.) The non-Catholic party has to promise that the Catholic's faith will not be in danger; both parties have to promise that the children will be baptized in the Catholic Church and not in any other, that they will receive a strictly and exclusively Catholic education. It will be observed that these are the only two promises exacted by common law as a necessary condition for the dispensation; they constitute what is called the *cautiones* in the strict sense. That the Catholic party should strive to convert the non-Catholic one, that the marriage should not be celebrated before a non-Catholic minister, is decreed in the following canons, but it is not the object of a formal promise, by common law. Particular indults may demand it; their clauses have to be studied carefully and strictly observed.

121. (*b*) *Necessity of the guarantees.* It is based on the divine law itself, and hence they can never be positively dispensed from. The practice which had prevailed in Germany during the eighteenth century and the first part of the nineteenth of not exacting them was strongly condemned by the Popes, particularly Benedict XIV, Pius VI, Pius VIII, Gregory XVI. (McCaffrey, History of the Church in the Nineteenth Century, vol. i, ch. 11, p. 95; G. Goyau, L'Allemagne religieuse, vol. ii, p. 136.) They should be insisted on even *in articulo mortis,* and the Catholic party should not be left in good faith (Holy Office, January 3, 1871; March 18, 1891), whether it is question of a marriage in contemplation or one already contracted, whether the dispensation is to be granted by the Holy See or by a delegate.

In Prussia the civil law of August 17, 1825, provided that in mixed marriages the education of the children should be left to the father, and priests were forbidden to demand any promises. Pius VIII in his letter of March 25, 1830, granted permission to pastors to assist in a merely passive manner at marriages contracted under those conditions; but there was no dispensation from the promises, the marriage remained unlawful; pastors were simply permitted to witness an unlawful action in order to avoid greater evils. (Gasparri, n. 454.)

If the Catholic party was well disposed and promised to fulfil all the clauses to the best of his ability, but the non-Catholic party could not be induced to make any promise, might not a dispensation be granted to the former in a case of very urgent necessity, that is to say, when the eternal salvation of the party would depend on it, supposing that there would be no danger of perversion for him or for the children? The concession has been made for the revalidation of marriages already contracted and "might perhaps be made also in the case of a marriage to be contracted in very urgent necessity." (De Smet, n. 254; Putzer, o. c. n. 220; Nouvelle Revue Théologique, January, 1913, p. 11.) In reality, there would not be a dispensation from the promises; the party who refuses to make them receives no permission to marry. It is granted only to the one who does make them, for very urgent reasons. That concession, however, could regularly be made only by the Holy See, for a dispensation granted by a Bishop is not valid unless all the conditions laid down in the indult are fulfilled, and exacting the promises is one of them.[1] If there was no time for recourse to Rome, the rules formulated in can. 1043-45 might find their application. (Putzer, n. 220; Decrees of June 12, 1912; N. R. T., January, 1913; Answer to Bp. Elder, A. S. S., vol. xxx, p. 381; Indult in Eccl. Rev., March, 1914; Collectanea, nn. 1263, 1271, 1273; Holy Office, April 12, 1889; De Becker, De Sponsalibus et Matrimonio, p. 242.)

122. (*c*) The promises ought not to be a mere formality, but they must be made sincerely and constitute a real guarantee that the required conditions will be fulfilled. In what form they should be made was not till now determined by any general law. Particular law or custom could demand that they be made in writing, or on oath or in presence of witnesses. Several canonists expressed the view that a mere oral promise on the part of the non-Catholic party would ordinarily not be sufficient. (Wernz, n. 587, note; Gasparri, n. 453.) The Holy Office declared, December 10, 1902, that the assertion of the Catholic party, even confirmed by oath, that the non-Catholic has made the necessary promises, would not of itself and generally be sufficient. (Coll., 2155.) The Council of South America held at Rome in 1899 required a written and sworn promise. The Second Plenary Council of Baltimore demanded a *solemnis promissio coram Deo.* The common law now demands that the promises be made in writing, as a rule.

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[1] Some few Bishops of the United States, not without insistence, have obtained from the Holy See a general indult, which enables them to grant a *sanatio in radice* in marriages contracted with the impediment of mixed religion or disparity of worship before a civil magistrate or a non-Catholic minister. The ordinary promises are demanded of the Catholic party. (Eccl. Review, June, 1916, p. 717.)

Those faculties are usually granted for cases in which the non-Catholic party refuses to appear before the priest. According to a decree of the Holy Office of December 22, 1916 (A. A. S., January, 1917, p. 13), if the non-Catholic party consents to appear before the priest, but refuses to give the promises, recourse should be had in that case also to a *sanatio in radice* rather than receive the renewal of the consent in a merely passive manner. But special faculties should be obtained for that from the Holy See.

3.° CONVERSION OF THE NON-CATHOLIC PARTY

Can. 1062. Conjux catholicus obligatione tenetur conversionem conjugis acatholici prudenter curandi.

123. The Catholic party is bound prudently to procure the conversion of the non-Catholic party.

This is the best, often the only, means of removing all danger of perversion. In itself, however, it is only a duty of charity following upon the marriage already contracted, and not, like the removing of danger of perversion, a condition intrinsically necessary for the lawfulness of the marriage. Hence common law does not demand here a formal promise made beforehand; but some particular indults do, and then it has to be exacted at least for the licitness of the dispensation and probably for the validity. (Canoniste Contemporain, Juillet, 1912, p. 502.)

4.° PROHIBITION TO APPEAR BEFORE THE NON-CATHOLIC MINISTER

Can. 1063. § 1. Etsi ab Ecclesia obtenta sit dispensatio super impedimento mixtae religionis, conjuges nequeunt, vel ante vel post matrimonium coram Ecclesia initum, adire quoque, sive per se sive per procuratorem, ministrum acatholicum uti sacris addictum, ad matrimonialem consensum praestandum vel renovandum.

§ 2. Si parochus certe noverit sponsos hanc legem violaturos esse vel jam violasse, eorum matrimonio ne assistat, nisi ex gravissimis causis, remoto scandalo et consulto prius Ordinario.

§ 3. Non improbatur tamen quod, lege civili jubente, conjuges se sistant etiam coram ministro acatholico, officialis civilis tantum munere fungente, idque ad actum civilem dumtaxat explendum, effectuum civilium gratia.

124. § 1. Even when a dispensation from the impediment of mixed religion has been obtained from the Church, the parties can not, either before or after their marriage before the Church, go, whether personally or through a representative, before a non-Catholic minister, in the exercise of his office, for the purpose of giving or renewing their matrimonial consent.

§ 2. If the pastor knows for certain that the parties are to violate that law, or have violated it already, he shall not assist at their marriage, except for very grave reasons, all danger of scandal being removed and the Ordinary having been consulted.

§ 3. It is not, however, forbidden for the parties, when the civil law demands it, to present themselves before a non-Catholic minister, acting as a civil magistrate, solely to comply with a civil formality, for the sake of civil effects.

1. Permission to marry a heretic does not imply permission to give or even to renew the marriage consent before a heretical minister. Marriage is a religious contract, and to seek for it the sanction, under any form, of a heretical or schismatic society, is to make profession, externally, of heresy or schism; and this is against the law of Christ as against the law of the Church, and is punished with excommunication. A promise to observe that law is demanded by some indults as a condition for the dispensation.

125. 2. If the pastor was informed by the parties that they have appeared or are to appear before the non-Catholic minister, or if he was asked for permission to do so, he could not give his consent implicitly or explicitly and should refuse to assist at the marriage. Should he know otherwise of the intention of the parties, regularly he could not remain silent but should remind them of the Church's law, and if they persisted in their determination he should not assist at their marriage. This rule, however, is not so absolute that exceptions can not be permitted for very grave reasons. In an instruction of the Holy Office it is said that the pastor should keep silence if he foresaw "that his admonition would certainly be unsuccessful and even harmful, inasmuch as it would cause the material sin to become a formal one."

(February 17, 1864; December 12, 1888; Collect., n. 1444; February 17, 1864; Collect., n. 1431; Gasparri, n. 466.) Care has to be taken to avoid scandal, and, because of the gravity of the matter, the Ordinary should be consulted. If the pastor had only a probability or a suspicion of the intention of the parties to go before the minister, the obligation to refuse his co-operation would not be the same, and prudence might often recommend silence in such cases.

126. 3. What is forbidden is to go before a non-Catholic minister acting as such, not if he was acting as a purely civil magistrate. If he acted at the same time as the representative of a religious body and of the civil authority, recourse to him would not be permitted. A minister of religion must generally be considered as acting in the former capacity when he is in church or vested in the insignia of his office. If he received the parties in his house or some such place, and without any religious vestments on, and addressed to them words of congratulation, of advice, having no confessional character, so that the visit on both sides would be little more than one of politeness or of friendship, there would seem to be in this no violation of the law of the Church, but again scandal ought to be avoided. (Gasparri, n. 467.)

5.° DUTIES OF ORDINARIES AND OTHER PASTORS OF SOULS

Can. 1064. Ordinarii aliique animarum pastores:

1.° Fideles a mixtis nuptiis, quantum possunt, absterreant;

2.° Si eas impedire non valeant, omni studio curent ne contra Dei et Ecclesiae leges contrahantur;

3.° Mixtis nuptiis celebratis sive in proprio sive in alieno territorio, sedulo invigilent ut conjuges promissiones factas fideliter impleant;

4.° Assistentes matrimonio servent praescriptum can. 1102.

127. Ordinaries and other pastors of souls shall:

1.° As much as they can, deter the faithful from contracting mixed marriages.

2.° If they can not prevent them, they shall do all in their power to have them celebrated according to the laws of God and of the Church.

3.° When a mixed marriage has been contracted, whether in their territory or outside of it, they shall watch over the faithful fulfilment of the promises.

4.° In assisting at those marriages they shall follow the prescriptions of can. 1102.

1. The Church considers mixed marriages as an evil and makes it a duty for pastors of souls to prevent them, not simply under this or that circumstance, but whenever it can be done. The Third Plenary Council of Baltimore gives the same direction, and points out the means that may be used. (n. 133.)

2. If they can not be prevented, pastors should do all they can to render them less harmful by endeavoring to obtain a faithful observance of the laws of the Church on the matter.

128. 3. After a mixed marriage has been contracted by one of his parishioners, whether it took place in his territory or elsewhere, the pastor or Ordinary is bound to see that the conditions are fulfilled as far as depends on him; not that the nonfulfilment of the promises would affect the marriage already contracted, but for other obvious reasons. That obligation is a grave one, as is explicitly declared in an instruction of the Propaganda to the Archbishop of Baltimore, June 25, 1884; and an instruction of the Sacred Congregation of the Inquisition adds that as, in a matter of such importance, nothing should be left to the discretion of the pastors, the latter should be requested to report to the Bishop as soon as possible every mixed marriage in contemplation, giving all the information about the place, the persons, etc., and both Bishop and pastor should watch over the faithful observance of the promises. (Gasparri, n. 472.)

129. It is supposed here that the marriage was contracted validly and lawfully. (*a*) What should be done if it had been contracted unlawfully—v.g., without a dispensation? As long as the marriage is not invalid, the parties may live together. The Catholic party, however, is guilty of grave sin, from which absolution can not be obtained unless the neglected formalities be now complied with. Moreover, if the marriage was contracted before a non-Catholic minister, an excommunication reserved to the Bishop has been incurred. (Inst. of Holy Office, January 3, 1871; De delictis et pœnis, can. 2319; Gasparri, n. 468; Wernz, n. 588; Putzer, n. 139.)

(*b*) If the marriage was also null because of the impediment of clandestinity, as will frequently occur under the new legislation, or because of some other diriment impediment, the parties ought either to separate or to have their marriage revalidated. To have it revalidated they must obtain the dispensation from the impediment of mixed religion, make the necessary promises and renew the consent in the proper form.

It may happen that the non-Catholic party is not willing to go before the priest and renew the consent. The remedy then would be a dispensation *in radice,* as will be explained later. If the Catholic party being ready to comply with all the requirements, the non-Catholic one refused to make the promises, and on the other hand the separation was very difficult, dispensation might be granted by the Holy See or, in some cases of necessity, by the Bishop, as said above—can. 1043-1045. (De Smet, n. 258.) According to the Holy Office (December 22, 1916—A. A. S. January, 1917, p. 13), rather than to have the marriage contracted before the Church without the promises, a dispensation *in radice* should be obtained from the Holy See. Some Bishops have faculties to dispense in certain cases. (Inqui., April 12, 1899; Ecclesiastical Review, March, 1915; June, 1916, p. 717.) When, as a matter of fact, the non-Catholic party has fulfilled the conditions, the children have been brought up in the true Faith, and the Catholic party has been left entirely free to practise his religion, there is not the same need of formal promises. (Putzer, o. c. n. 220.)

4. For the manner of assisting at mixed marriages we are referred to canon 1102.

IV. UNWORTHINESS

130. Several causes of unworthiness are enumerated by canonists: sin, censure, affiliation with forbidden societies, insufficient knowledge of catechism, etc. Two kinds are considered here:

1.° UNWORTHINESS BY REASON OF APOSTASY OR AFFILIATION WITH FORBIDDEN SOCIETIES

Can. 1065. § 1. Absterreantur quoque fideles a matrimonio contrahendo cum iis qui notorie aut catholicam fidem abjecerunt, etsi ad sectam acatholicam non transierint, aut societatibus ab Ecclesia damnatis adscripti sunt.

§ 2. Parochus praedictis nuptiis ne assistat, nisi consulto Ordinario, qui, inspectis omnibus rei adjunctis, ei permittere poterit ut matrimonio intersit, dummodo urgeat gravis causa et pro suo prudenti arbitrio Ordinarius judicet satis cautum esse catholicae educationi universae prolis et remotioni periculi perversionis alterius conjugis.

§ 1. The faithful shall be deterred also from contracting marriage with those who have notoriously renounced the Catholic faith without, however, joining a non-Catholic sect, or with those who are notoriously affiliated with societies condemned by the Church.

§ 2. The pastor shall not assist at such marriages, except after consulting the Ordinary, who, everything being considered, may permit it, provided that there be a grave reason for doing so, and the Ordinary judge, in his prudence, that sufficient provision is made for the Catholic education of all the children, and against danger of perversion for the other party.

Several times, particularly in recent years, Rome had been asked what was to be done in those cases, which were becoming more and more frequent, of Catholics wishing to marry members of condemned societies or persons who, without joining any other religious organization, had practically ceased to be members of the Church and had fallen into indifferentism, rationalism, unbelief. The answers given were only for particular cases and of a provisional character. Pastors were directed to see in each case what was more prudent and, if grave difficulties would arise, to consult the Congregation, until a general rule would be promulgated by the Holy See. (Gasparri, n. 481.) That rule we have now in this canon.

131. 1. The apostates and members of condemned societies come under this law only when they are notorious, when they have renounced the Faith or joined the societies, and this is publicly known. Marriage with them is dangerous and should be discouraged.

2. If the faithful do not heed the advice, they are guilty of grave imprudence and the pastor should not co-operate in their sin by assisting at their marriage. Exceptions to that rule should not be made without consulting the Ordinary. He may permit a priest to assist at such marriages, but a grave rea-

son is required; and the danger to the children or to the Catholic party must be removed. No dispensation is required, because unworthiness is not, strictly speaking, a canonical impediment. No formal promises are exacted.

This is the common law, but particular legislation may be more exacting, as it has been, in the past, in some places.

2.° PUBLIC SIN AND CENSURE

Can. 1066. Si publicus peccator aut censura notorie innodatus prius ad sacramentalem confessionem accedere aut cum Ecclesia reconciliari recusaverit, parochus ejus matrimonio ne assistat, nisi gravis urgeat causa, de qua, si fieri possit, consulat Ordinarium.

132. If a public sinner or one notoriously under censure, refuses to go to Confession beforehand or to be reconciled with the Church, the pastor shall not assist at his marriage, except for grave reasons, about which he shall, if possible, consult the Ordinary.

The priest who assists at the unworthy reception of the sacrament of marriage co-operates, although remotely, in the sacrilege thereby committed, and this is to be avoided except for proportionately grave causes. If the unworthiness is known only through confession, it can not be taken into account in the external forum. If, although known outside of the confessional, it remains of a private character, or occult, it may be a reason for the pastor to strive, on moral grounds, to prevent the marriage. But canon law is concerned only with what pertains to the external social order in the Church—with public sins and public censures. A sin is public *de jure* when it has been proved juridically, in court; *de facto* when it has been committed in public or has become known to a large number of people. (Gasparri, n. 477.) A censure is public or notorious when one has been, for example, excommunicated by name, or has been denounced as such, or when it is generally known that he has incurred the censure. As in those cases the guilt is public, the reparation ought to be also of a public character, before the pastor may, in the name of the Church, openly sanction by his presence the marriage of the party. An internal act of contrition would not suffice; the reception of the sacrament of Penance or absolution from censures are required by the Church. The presence of the priest at the marriage of one who would refuse to comply with these prescriptions would, however, be only a material and remote co-operation and it can be permitted for grave reasons. St. Alphonsus gives as sufficient the danger of death or great evils affecting the community. Other authors add the danger that if assistance is denied by the priest, the parties will go before the civil magistrate, or, in general, that greater evils are likely to follow from refusing than from consenting to assist at the marriage. But as those are difficult questions to decide, in which also some uniformity of action in the diocese is very desirable, the pastor should, even when the reasons appear sufficient to him, consult the Ordinary if it be possible. (Gasparri, n. 477; De Smet, n. 117.)

CHAPTER IV

DIRIMENT IMPEDIMENTS

133. Many canonists count eighteen diriment impediments, which they divide into three classes: (1) those which directly affect the consent—error, condition, insanity, violence, and fear; (2) those which affect directly the contracting parties, the persons and their capability of marrying, and are in the nature of inabilities—age, impotency, previous marriage, disparity of worship, Orders, vow, abduction, crime, consanguinity, public decency, spiritual and legal relationship; (3) one concerns the form of the contract and is known as clandestinity. Strictly speaking, however, only those of the second class are matrimonial impediments properly so called. (D'Annibale, vol. iii, § 208; Gasparri, nn. 248, 490.) Those of the first are impediments to any contract and not so much impediments to the contract as the want of one of its constitutive elements. This is the view taken by the legislator, who treats of them not under the heading of impediments but in the chapter on marriage consent. The form prescribed by the Church does not constitute an incapacity to marry, since it depends on the parties to observe it. It belongs to a distinct order of things and is the object of a distinct chapter. To marry validly one must be willing to do so, observe the proper formalities, and not be bound by any impediment.

The Council of Trent reduced the impediments in number and in extent, because, it said, on account of the multitude of prohibitions, people would, through ignorance, form illegitimate unions which can not be persevered in without sin nor dissolved without scandal. (Sess. xxiv, cap. 11, de Ref. Mat.) The need of further reductions was often felt in modern times and several *vota* in that sense were presented by the Fathers of the Vatican Council. What it was not possible for the Council to do has now been done by the new legislation, which thus continues and completes the work of the Council of Trent.

I. AGE

134. There are two impediments arising from bodily incapacity—age and impotency.

Can. 1067. § 1. Vir ante decimum sextum aetatis annum completum, mulier ante decimum quartum item completum, matrimonium validum inire non possunt.

§ 2. Licet matrimonium post praedictam aetatem contractum validum sit, curent tamen animarum pastores ab eo avertere juvenes ante aetatem, qua, secundum regionis receptos mores, matrimonium iniri solet.

§ 1. Males who have not completed their sixteenth and females who have not completed their fourteenth year can not marry validly.

§ 2. Although marriage contracted after that age be valid, pastors of souls shall take care to deter from it young people who have not reached the age at which, according to the customs of the country, marriage is usually contracted.

1.° No age is required by the natural law for validly contracting marriage, but only sufficient discretion to give a matrimonial consent, which may exist *post septennium,* according to canonists. (De Becker.)

135. 2.° Formerly the law of the Church required, besides sufficient discretion, puberty or the power of procreating, and both were supposed to exist at the age of twelve in females and of fourteen in males, not before, unless the contrary was proved. Hence marriages contracted before that age were considered as null unless it could be proved that the parties possessed both sufficient discretion and puberty; contracted after that age, they were considered as valid unless it was proved that one or both parties wanted the necessary discretion.

The present law introduces two changes the reason of which is easy to perceive: (1) The legal age for marriage is now 14 and 16. (2) Marriage contracted before that age, without dispensation, will always be null, and there will be no occasion for inquiring whether "precocity supplies the defect of age."

136. 3.° The ecclesiastical impediment of age may be dispensed from and it is not binding on unbaptized persons, even when contracting marriage with Christians. Provided the unbaptized party possesses the discretion demanded by the natural law and the baptized one is of legal age, the contract may be valid. The provisions of the civil law would also have to be taken into account with regard to the unbaptized.

4.° The Church, in determining the age required for the validity of marriage, must have in view conditions and customs prevailing in the various parts of the world; in some, marriage is contracted at a much earlier age than in others. But, if the age of 14 and 16 respectively is recognized as sufficient everywhere for the validity, it is not always so for the licitness and expediency. In cold climates, says Lehmkuhl (v. ii, 748), it will hardly be lawful and seldom expedient to marry before the age of 18 and 20 or even later. Pastors are directed to use their influence to prevent premature marriages, which ordinarily are entered into without sufficient deliberation or physical maturity, and are detrimental to both soul and body. On the other hand, the Church does not approve of unreasonably late marriages. The age of 24 is considered as *ætas superadulta* in a woman, with regard to marriage, and for that reason accepted as a canonical reason for dispensation.

II. IMPOTENCY

Can. 1068. § 1. Impotentia antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive alteri cognita sive non, sive absoluta sive relativa, matrimonium ipso naturae jure dirimit.

§ 2. Si impedimentum impotentiae dubium sit, sive dubio juris sive dubio facti, matrimonium non est impediendum.

§ 3. Sterilitas matrimonium nec dirimit nec impedit.

137. § 1. Impotency anterior to the marriage and perpetual, whether in the man or in the woman, whether known to the other party or not, whether absolute or relative, annuls marriage by the very law of nature.

§ 2. If the impediment of impotency is doubtful, whether the doubt be one of fact or of right, marriage ought to be permitted.

§ 3. Sterility renders the marriage neither invalid nor illicit.

1.° NATURE AND SPECIES OF IMPOTENCY

Authors do not agree as to what constitutes real impotency, and the legislator has avoided settling the controversy. Impotency differs from sterility. The latter is not, of itself, even a prohibitory impediment, as has always been the common teaching and is here explicitly declared; the former is a diriment impediment. Sterility is defined *impotentia generandi;* impotency, *impotentia coeundi,* inaptitude for conjugal relations, or for those acts which of their nature, *per se,* intrinsically are apt for generation. For some this inaptitude exists only when normal sexual relations, which consist essentially in the "*immissio membri virilis in vaginam mulieris cum seminis effusione,*" are not possible, as in the cases of aphrodisia, anaphrodisia, at times of hypospadias and epispadias; of eunuchs, spadones; also of persons who have undergone the operation of vasectomy, according to many. These authors would not consider as impotent persons who, although capable of normal sexual relations in the sense defined above, are wanting in some organ or condition essential for fecundation, such as women who have undergone the operation of ovariotomy or fallectomy. For others, whenever one element necessary for fecundation is wanting there is not simply sterility, but impotency, even if sexual relations are possible, as in women without ovaries. (Eschbach, Disputationes Physiologico-Theologicæ, Disp. 2, pars. 2; Antonelli, Medicina Pastoralis, vol. ii, p. 154.)

Impotency may be anterior or posterior to the marriage; absolute or relative; temporary, when it can be cured by natural and ordinary means; permanent, when it can not be cured naturally or could be cured only by means which would be extraordinary or dangerous or unlawful.

2.° ANNULLING EFFECT

138. Impotency annuls marriage by the divine and not simply by the ecclesiastical law, as some had thought (Gasparri, n. 526, 7; Santi, iv, xv, n. 7), because it means the absence of the object of the marriage contract itself. It has that effect whether it is absolute or only relative, on the part of the man or of the woman; whether the healthy party knows the infirmity of the other and consents to the marriage in spite of it, or not. To annul the marriage, impotency must be anterior to it, for the contract, once validly made, is indissoluble; and perpetual, for if aptitude for conjugal relations is to be possessed some day it can form the object of a valid contract; only conjugal relations are not permitted as long as the impotency lasts.

3.° PROOF OF THE IMPEDIMENT

139. Impotency is difficult to prove, because it is difficult in theory to determine its conditions and in practice to find out whether the conditions are fulfilled or not; particularly whether the impotency is anterior and perpetual. A special form of trial is prescribed by the Church for those cases. (Gasparri, n. 1197; Benedict XIV, Const. Dei Miseratione, n. 15; Inst. Aug. 22, 1840; June 20, 1883; Quemadmodum, art. v)

Often impotency will remain doubtful. If it is question of a marriage to be contracted, doubtful impotency will not prevent it, whether the doubt be one of right or one of fact, as explicitly stated by the law, because no person is to be supposed abnormal unless he be proved to be so. Thus the Church permits marriage to women whose ovaries have been totally amputated, although according to many it would constitute perpetual impotency. If it is question of a marriage already contracted, it will be held as valid until all reasonable doubt is removed. Ordinarily, if the impotency is probable and the marriage has not been consummated, the Holy See will grant a dispensation *super matrimonium ratum et non consummatum.* If the marriage had been dissolved on the supposition that the impotency was perpetual and later on it was cured, the parties would have to resume cohabitation unless the dissolution of the first marriage could be obtained as *ratum et non consummatum.*

III. PREVIOUS AND EXISTING MARRIAGE

Can. 1069. § 1. Invalide matrimonium attentat qui vinculo tenetur prioris matrimonii, quanquam non consummati, salvo privilegio fidei.

§ 2. Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non ideo licet aliud contrahere, antequam de prioris nullitate aut solutione legitime et certo constiterit.

140. § 1. Marriage is rendered invalid by the bond of a previous marriage, even only ratified, excepting the privilege of the faith.

§ 2. Although the first marriage be null or dissolved for whatever reason, it is not lawful to contract another one before the nullity or dissolution of the first be established legitimately and certainly.

1.° This impediment is implied in the divine law of the unity of marriage, which now binds all men, whether baptized or not, and which admits of no exception. A person, then, who was married before can not be permitted to marry again unless the first marriage be null or has been dissolved. The privilege of the faith forms an exception to that rule only in so far that the first marriage is dissolved, not before, but at the very moment the second one is contracted.

141. 2.° A marriage may be null for a number of reasons—want of consent, existence of a diriment impediment. When freedom to marry is claimed on that ground the nullity has to be recognized and pronounced by the ecclesiastical court. It is even necessary, ordinarily, that there be two sentences for the nullity before it is officially established and a new marriage be permitted. (Can. 1986-1989.)

By a decree of the Holy Office of June 5, 1889, there are three cases in which one sentence will suffice, and the Ordinary will not have to follow all the formalities of a regular trial as prescribed by Benedict XIV: (1) When the nullity is due to an impediment of disparity of worship and it is evident that one of the parties was baptized and the other was not. (2) When it is due to the existence of previous marriage and it is certain that the first partner is still living. (3) When it is due to impediments of consanguinity, licit affinity, and spiritual relationship which are proved beyond possibility of reasonable doubt. If the evidence was not quite clear, two decisions would be required, as was declared by the Holy Office, March 27, 1902. One is always necessary, and if it is admitted as sufficient it is simply because in such cases there is little danger of error.

The present law maintains those provisions and adds the impediments of Sacred Orders and solemn vow (Can. 1990-1992) to those of consanguinity, affinity, and spiritual relationship.

142. 3.° Dissolution may be by solemn vow, pontifical dispensation, or, more commonly, the death of the former husband or wife. In the first two cases an authentic document showing the existence of the vow or of the dispensation will constitute a legitimate proof, and no further formalities will be required. If the death of the former husband or wife is well known in the locality or proved beyond doubt, a formal decision by the court is not necessary. If it occurred in some distant place, sufficient evidence has to be secured to avoid danger of error or fraud. Absolute certainty is often impossible to obtain and the Church does not exact it, but moral certainty is demanded; and if there remains a serious doubt the case should be referred to the matrimonial court for an authoritative declaration. How that certainty can be obtained and when the evidence may be considered as sufficient can not be defined in the abstract, but we have to guide us numerous decisions of particular cases by the Roman Congregations and several instructions of the Holy See, particularly the instruction of Clement X, August 21, 1670; and that of the Holy Office of May 13, 1868, inserted in the Acts of the Third Plenary Council of Baltimore, p. 258, and reproduced in the A. A. S., vol. ii, an. 1910, p. 199 seq.

143. Here is a summary of the directions contained in the last mentioned document: (1) Prolonged absence is not, in itself, a sufficient proof of death. (2) A certificate taken from the registers of the parish, hospital, or army should be obtained if possible. If it can not be obtained from the ecclesiastical it should be obtained from the civil authorities of the place in which the party died. (3) If that document can not be secured, a substitute for it may be the deposition of witnesses. There must be at least two, worthy of credit, acquainted with the deceased, testifying, on oath, as to what they know personally and agreeing with one another on the time, cause, and other circumstances of the death. If they were relations, companions, or associates of the deceased, their testimony has still greater weight. (4) Although the testimony of one single witness be not ordinarily admitted as sufficient to constitute a full proof, in this matter, in order that a person may not be unnecessarily condemned to remain a celibate against his will, the Congregation does not reject it provided the witness possesses the qualifications mentioned above, that he be unexceptionable, and that his testimony be confirmed by other serious circumstantial evidence; or, if such confirmation be wanting, that there be nothing inconsistent or improbable in his deposition. (5) The testimony of hearsay witnesses may be accepted as sufficient when nothing else can be had and it fits in with the circumstances of the case. (6) At times it is not possible to have even one such witness; then every possible conjecture, clue, or surmise should be used, with the greatest care and prudence, to constitute a proof, so that, when all available evidence has been collected and duly weighed, a prudent man may consider the death as established with very great probability if not moral certainty. (7) The conjectures or presumptions which may be used are, amongst others, the following: Did the person in question lead a good religious life? Was he devoted to his wife? Had he any motive for hiding himself? Did he have any property, or expect any? Did he go away with the consent of his wife and of his relations? What was then his age—his state of health? Did he write? Did he manifest his intention of returning? Was he in a place of danger? (8) Common report may also constitute a proof, on condition that it be supported on oath by at least two reliable witnesses who assign a reasonable cause for such report, state whether they have it from the greater and better part of the community, and believe in it themselves. There must not be reason to fear that the rumor was started by interested parties. (9) The investigation might be made also through the newspapers.—Proof accepted as sufficient for the civil would not necessarily be so for the ecclesiastical authority.—When there remains a serious doubt the matter must be referred to the Holy See.—By a decree of the Holy Office of July 20, 1898 (A. S. S., vol. xxxi, p. 252), Bishops were authorized to declare free the wives of the Italian soldiers who had taken part in the battle of Adona, provided it was certain that they had really taken part in the battle and that the investigation made by the government had revealed no trace of them.

A decree of December 16, 1910 (A. A. S., 1911, p. 26), contains a similar decision with regard to Russian soldiers who took part in the battle of Mukden in the Russo-Japanese war. With regard to the victims of the Messina earthquake the Congregation of the Sacraments demanded that each case be investigated separately in accordance with the rules laid down in the instruction of 1868.[1] (March 12, 1910; A. A. S., vol. ii, p. 196.)

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[1] An application of the same rules may be found in a case decided by the Congregation of the Sacraments, January 22, 1909. (Il Monitore Ecclesiastico, July, 1909, p. 200; Nouvelle

IV. DISPARITY OF WORSHIP

Can. 1070. § 1. Nullum est matrimonium contractum a persona non baptizata cum persona baptizata in Ecclesia catholica vel ad eandem ex haeresi aut schismate conversa.

§ 2. Si pars tempore contracti matrimonii tanquam baptizata communiter habebatur aut ejus baptismus erat dubius, standum est, ad normam can. 1014, pro valore matrimonii, donec certo probetur alteram partem baptizatam esse, alteram vero non baptizatam.

Can. 1071. Quae de mixtis nuptiis in canonibus 1060-1064 praescripta sunt, applicari quoque debent matrimoniis quibus obstat impedimentum disparitatis cultus.

Revue Théologique, Dec., 1909, p. 736; see also two cases decided Nov. 28, Dec. 18, 1914; A. A. S. 22, Jan., 1915, p. 40; Il Monitore Ecclesiastico, Marzo, 1915, p. 102; Canoniste Contemporain, Jan., 1915, p. 45; Ecclesiastical Review, August, 1915.)

Bruno Buttera left Italy for Brazil at the age of about 50. During the first year he wrote almost every month to his wife and told her that he intended to go back soon. Then he ceased to be heard from. Four months after her last letter a fellow-workman of his wrote announcing his death, and he died himself the same year.

Now, after twenty years, Buttera's wife wishes to marry again. No further evidence of his death can be obtained, and his letters, as well as that of his friend, are lost, but it is commonly believed that he is dead. Considering that Buttera would be now 70 and that he was not very strong; that his death was affirmed by a friend who had no interest in deceiving; that his silence can not be accounted for otherwise, as he loved his family and wrote frequently during the first year; that he had manifested his intention of coming back; that none of those who went into that country later heard of him; and that for these reasons all his acquaintances were convinced that he was dead, the Sacred Congregation decided that his wife might be allowed to marry again.

144. § 1. A marriage is null when contracted between a person baptized in, or converted to, the Catholic Church and an unbaptized person.

§ 2. If the party, at the time of the marriage, was commonly considered as baptized, or if his or her baptism was doubtful, the marriage is to be held as valid until it is proved with certainty that one party was baptized and the other was not.

Can. 1071. What is prescribed by canons 1060-1064 for mixed marriages must be applied to those also to which there is an impediment of disparity of worship.

1.° ORIGIN OF THE IMPEDIMENT

In the first centuries of the Church, marriages of the faithful with infidels were forbidden in very much the same terms as marriages with heretics. They were unlawful, but generally valid. Some early Spanish or Gallic Councils seem to declare them null, but these were particular laws and did not receive universal recognition. There was a tendency, however, to make a difference between marriages with heretics and marriages with infidels; and the custom of treating the latter as invalid spread gradually, particularly from the seventh century onward. It had become universal and obtained force of common law towards the twelfth century, if not much earlier. (Dictionnaire de Théologie Catholique, Disparité de culte, p. 1417; Wernz, n. 504.) When in the sixteenth century the question was asked whether the impediment was in force, even in those missions, like China and Japan, where the custom had never been received, the Holy See answered in the affirmative.

2.° NATURE AND EXTENT OF THE IMPEDIMENT

145. Under the former discipline, the impediment of disparity of worship existed whenever one of the parties was baptized, no matter in what Christian church, and the other was unbaptized, whether he belonged to a Christian sect or not. It was based exclusively on the reception and non-reception of Baptism, not, as the impediment of mixed religion, on the diversity of religious profession. Henceforth it will be based on both. It will exist only between a Catholic and an unbaptized non-Catholic, but no longer, v.g., between a baptized Protestant and an infidel or an unbaptized Protestant. By "Catholic," as expressly stated, is to be understood any person baptized in the Catholic Church or converted to the Catholic Faith, whether actually a member of the Church or not. As for clandestinity, the rule holds here: *Once a member of the Church, always subject to her law.* Likewise, non-Catholics are affected by the law only when they marry Catholics. This important change in the discipline was rendered necessary by the increasing number of Protestants who are not baptized, and the consequent multiplication of invalid marriages among them. In future, fewer marriages will be affected by the impediment and, as they are marriages which ought to be celebrated before the Church, the dispensation will be secured when needed.

3.° APPLICATIONS

146. (1) In the application of this law, canonists universally admitted the principle supported by many Roman decisions: *In relation to marriage, a doubtful baptism is a valid baptism.* Does the rule hold under the new legislation? It certainly does when at the time of the marriage the baptism was considered as certain or doubtful. Nor is there any distinction made between a doubt of fact and one of law, nor between a doubt which remains after serious investigation and one about which there has been no investigation at all. The marriage will be presumed valid when contracted with the doubt as well as when the doubt arises after. On the other hand, it is certain that the presumption in favor of the marriage is not an absolute one, as held by some canonists, but it yields to truth.

There will be no occasion for applying the principle in cases of marriage between a certainly unbaptized and a doubtfully baptized Protestant, or a doubtfully baptized Protestant and an infidel; they do not come under the law. Will it now apply in the case of a marriage between a doubtfully baptized Catholic and a certainly unbaptized non-Catholic, and, therefore, should such a marriage be declared null? It would not seem so, although the legislator may not have had that case in view; for the marriage is "to be held as valid until it is proved that one of the parties was baptized and the other unbaptized." It is rather the more general principle that prevails here; marriage is presumed valid until the contrary is proved, and this is also in accordance with the intention of the legislator, which is to reduce the number of invalid marriages.

147. (2) Is a marriage between a Catholic and a doubtfully baptized non-Catholic, without dispensation from the impediment of disparity of worship, lawful as well as valid? The question may not be a very practical one, and the law does not consider it, but the general rule is that it is not lawful to contract marriage with a doubtful impediment, and there is no obvious reason for admitting an exception in this case. The doubt should be removed or the baptism administered again *sub conditione,* or a dispensation obtained. A dispensation from the impediment of mixed religion would not suffice to remove the impediment of disparity of worship if it happened to exist. This has been declared several times by the Congregation (April 29, 1842, 1890), and the contrary opinion has no probability. The practice of granting, *ad cautelam,* the dispensation from disparity of worship whenever it is granted from mixed religion, has been reproved also, because Rome demands that each case be studied individually and that power of dispensing be used sparingly. (Letter of Card. Ledochowsky to the Bishop of Helena, May 11, 1900; De Becker, l. c., p. 240; Nouvelle Revue Théologique, 1902, p. 204; De Smet, n. 290.)

148. (3) In practice, the difficulty often arises from the want of evidence, in regard to the existence or the validity of the baptism of Protestants. As these will be affected by this law only when they marry Catholics, and as their marriage has, then, to be contracted in presence and with the sanction of the parish priest, there will not, in future, be so many complications *post factum.* However, when a doubt arises, whether before or after the marriage, about baptism, each case has to be investigated in particular and the doubt removed as far as is possible. To guide us in that investigation we have, as before, the general principles of law on evidence and proofs, and the special instructions of the Holy See, particularly the instruction of the Holy Office to the Bishop of Annecy, November 17, 1830, the instruction of December 20, 1837 (Second Plenary Council of Baltimore, p. 317), and the instruction to the Bishop of Savannah, August 1, 1883 (Third Plenary Council of Baltimore, p. 246).

Baptism is a fact, and facts are not presumed, but must be proved. On the other hand, the validity of an act is presumed unless there be some proof to the contrary. To establish the fact of baptism, the law admits the testimony of a single witness, provided he be unexceptionable, there be no reason to suspect his truthfulness, and no danger of injury to a third party; even the testimony of the party concerned may be accepted. (Canon 179, de Baptismo.) In default of positive proofs, we may go on presumptions. The rule laid down by Innocent IV (c. 3, x, iii, xliii) that the fact of being born of Christian parents and brought up in Christian surroundings constitutes, in favor of baptism, a presumption which amounts to certainty, would not necessarily apply at the present time if it was question of Protestants or very negligent Catholics. For non-Catholics the instructions prescribe an examination of the teachings of the sect to which the parties and their parents belong, as also the religious habits of the parents themselves. If in the sect baptism is held as obligatory and a valid matter and form ordinarily used; if, on the other hand, the parents were strict adherents of their religion, the baptism may be presumed. On the contrary, if the parents belong to a sect which does not administer baptism, or if they were very careless, there is no presumption in favor of baptism. When no evidence can be obtained one way or the other, particularly if the question bears on the validity of a marriage already contracted, the case should be referred to Rome. (Inst. of 1883; The Catholic Encyclopedia, Disparity, p. 38.) The Holy Office, June 2, 1910, upheld as valid the marriage of a Protestant about whose baptism it was only known that the practice of his family was to have all the children baptized. (De Smet, n. 290, p. 119.)

4.° CONDITIONS FOR DISPENSATION

149. (*a*) The conditions for dispensation are the same as for the impediment of mixed religion. The danger of perversion must be removed, there must be a grave reason, and the promises must be exacted, regularly; they can never be positively dispensed from. Here, however, even more readily than in mixed religion, because the validity of the contract is at stake, the Holy See may, for very urgent reasons, in favor of a well-disposed Catholic who makes the required promises on his or her side, grant the dispensation, although the promises are refused by the non-Catholic party; always on condition that there is no danger of perversion; for when such danger exists, the dispensation is never granted, not even to revalidate a marriage already contracted. The Catholic party may, for very serious reasons, be left in good faith, but the marriage remains null. Thus, a decree of the Holy Office of June 3, 1892, granted faculties to the Archbishop of Cincinnati to dispense, in the name of the Holy See, in the case of a Catholic woman who had married a non-baptized Protestant and could not obtain from him the promise that the male children would be baptized Catholics. (A. S. S., vol. xxx, p. 382.) (*b*) A decree of April 6, 1890, published June 21, 1912, declares that dispensation from this impediment is never granted by one having faculties from the Holy See unless the promises are made explicitly (*nunquam concedi*); and another decree published the same day adds that if the promises had not been made either because they had not been exacted or because they had been refused, the dispensation and subsequent marriage would certainly be null. (A. A. S., July, 1912, p. 443; Nouvelle Revue Théologique, Jan., 1913, p. 9.)

From the absoluteness of those declarations, some canonists (De Smet, n. 291; Besson in N. R. T., l. c., p. 10) concluded that a Bishop could never "make use of his indult in favor of a well-disposed Catholic if the unbaptized party refused to observe the conditions." He could not even dispense *in articulo mortis* or in urgent necessity in virtue of can. 1043-1045. Others, however, observed that previous decrees had been very absolute also, and still grave canonists continued to maintain that there might be cases in which a Bishop would be allowed to use his indult although the non-Catholic party had not made the promises. (Putzer, n. 220.) The Holy Office, in answer to a question from the Archbishop of Cincinnati, stated that a dispensation granted because of urgent necessity, without the promises from the non-Catholic party, was valid, and that the indult could be used in that case—*potuisse uti facultatibus.* (A. S. S., xxx, p. 382.) Special faculties have been granted to some Bishops of the United States, allowing them to dispense, on certain conditions, from either mixed religion or disparity of worship, with the promises from the Catholic party alone. (Ecclesiastical Review, March, 1915, p. 355.)

150. *Nota.* 1. Dispensation from the impediment of disparity of worship implies for the Catholic party dispensation from all the relative impediments which are not binding on the unbaptized and from which it is customary for the Church to dispense.

2. The rules for the celebration of these marriages are the same as for mixed marriages, with this difference, that if dispensation had not been obtained, even passive assistance would never be permitted, since the marriage would be null.

V. SACRED ORDERS

Can. 1072. Invalide matrimonium attentant clerici in sacris ordinibus constituti.

151. A marriage is invalid when attempted by clerics in Sacred Orders.

In the Latin Church the Major Orders are the priesthood, the diaconate, and the subdiaconate, and they constitute a diriment impediment to marriage, at least since the Second Lateran Council in 1139, on condition that they have been received freely. There would be want of freedom if one was forced to submit to ordination and also if Orders were received without, at least, a confused knowledge of the obligations they impose. The ordination in such cases might be valid, but the cleric thus ordained would not be bound by the law of celibacy unless he would freely accept it afterwards, "after reaching the age of sixteen," said the ancient texts, a clause which is not inserted in the new law. (Can. 214.)

This impediment is of ecclesiastical origin, and can be dispensed from. Dispensation is granted, although rarely, to subdeacons and deacons; very rarely to priests and only for reasons of common good; as existed after the English Schism (1554), or after the French Revolution (1801). There have been a few cases of Bishops who were permitted to return to the lay state, but there seems to be no example of any one being dispensed from the obligation of continency. (Tanquerey, n. 1076.)

VI. SOLEMN VOWS

Can. 1073. Item invalide matrimonium attentant religiosi qui vota sollemnia professi sint, aut vota simplicia, quibus ex speciali Sedis Apostolicae praescripto vis addita sit nuptias irritandi.

152. Marriage is null also when attempted by Religious who have taken solemn vows, or simple vows which have that annulling power by special disposition of the Holy See.

The diriment power of the public vow was clearly and formally decreed for the first time in the Second Lateran Council, held in 1139. (Wernz, n. 377; Esmein, vol. i, p. 274.) By "public vow" was then understood any vow taken before the Church (*in conspectu Ecclesiæ*), but in the course of the twelfth century that conception was modified and only those vows came to be called "public"—or, rather, "solemn"—which were taken in a religious profession. That distinction was officially sanctioned in a decretal of Boniface VIII, who declares that "only that vow is to be considered as solemn and diriment of marriage contracted hereafter, which is taken solemnly in the profession, whether express or tacit, made in one of the Orders approved by the Holy See."(Cap. uni. III, 15, in VI.) In the days of Boniface VIII all the Religious Orders approved by the Holy See were Orders strictly so called, and all religious professions were solemn professions. It is only much later that Congregations with simple vows were instituted. Permission was first given to scholastics of the Society of Jesus to make only simple vows or a simple profession before they were admitted to the solemn profession. The concession was extended to other Orders, and many of the modern ones have only simple vows, particularly Orders of women.

Dispensation from this impediment is regularly granted only by the Holy See.

VII. ABDUCTION

A. Ancient Discipline

153. In the Mosaic legislation there is no special enactment against the crime of abduction, although we can not doubt that it was severely punished. (Deut. xxii., 22.) The ancient Roman law dealt rather leniently with it—the abductor was allowed to contract marriage with the abducted if she was willing. Constantine, under the influence, no doubt, of Christian ideas, forbade such marriages; and Justinian punished abduction with death and the confiscation of property. There was no ecclesiastical legislation on the subject during the first three centuries, as St. Basil tells us; the need of it was not felt. But when in the fourth and fifth centuries disorders multiplied, the Church joined her efforts to those of the Christian emperors to stamp out the evil, and she pronounced excommunication against abductors without, however, absolutely forbidding them to marry their captives. Among the Germanic nations the penalties for the crime of abduction had nothing of the Roman severity. They consisted principally in pecuniary compensations to parents or guardians.

154. 2. With the fall of the Roman empire began that period of violences and disorders which lasted for several centuries; it was then found necessary to take severe measures for the protection of women and the liberty of the marriage contract. Hence, in some particular Councils of the sixth and following centuries, and in civil legislations as well, do we find very stringent laws against wife-captors.

It is only in the ninth century, however, that abduction becomes clearly an impediment to marriage. Then, in some places, the abductor is absolutely forbidden to marry the abducted woman, or even, in certain cases, any other woman. (C. 11, c. xxxvi, q. 2; c. 34, c. xxvii, q. 2.) The law applied to abduction by seduction as well as to abduction by violence, and the impediment was, according to many, diriment.

155. 3. That severity was due to the special circumstances of the time; as soon as they changed, a reaction set in, and the tendency, always existing in the Church, to favor the freedom of marriage, again asserted itself. In the twelfth century the principle that marriage is constituted by the consent of the parties having become more universally recognized, the opposition of the parents ceased to be a real impediment and consequently also abduction by seduction. Furthermore, Innocent III decreed that whenever dissent on the part of the abducted woman would change into willingness, the marriage could take place, even, as was commonly interpreted, if the woman was still under the power of the captor. Thus abduction by violence was no more an impediment so long as the abducted party consented to the marriage and there remained no impediment of abduction distinct from that of violence or fear. The law continued unchanged till the sixteenth century, but disorders and abuses had multiplied again, and the Council of Trent deemed it necessary to return to the severity of the former discipline. (The Catholic Encyclopedia, Abduction.) It decreed, therefore, that "between the abductor and the abducted woman there can be no marriage as long as she remains in his power."

The present law simply renews the Tridentine decree, completing it and officially sanctioning some interpretations given of it by canonists or by Congregations.

B. Present Discipline

Can. 1074. § 1. Inter virum raptorem et mulierem, intuitu matrimonii raptam, quandiu ipsa in potestate raptoris manserit, nullum potest consistere matrimonium.

§ 2. Quod si rapta, a raptore separata et in loco tuto ac libero constituta, illum in virum habere consenserit, impedimentum cessat.

§ 3. Quod ad matrimonii nullitatem attinet, raptui par habetur violenta retentio mulieris, cum nempe vir mulierem in loco ubi ea commoratur vel ad quem libere accessit, violenter intuitu matrimonii detinet.

156. § 1. Between the abductor and the woman abducted with a view to marriage there can be no marriage as long as the abducted person is in the abductor's power.

§ 2. If the abducted woman, having been separated from the abductor and restored to a place of safety, consents to have him for a husband, the impediment ceases.

§ 3. In regard to the nullity of marriage we must assimilate to abduction the violent detention of a woman, when, namely, a man violently detains her, with a view to marriage, in the place where she resides or where she has come of her own accord.

1.° CONDITIONS FOR THE IMPEDIMENT

(*a*) It must be the abduction of a woman by a man. The words *vir* and *mulier* used in the text remove all possible doubt on that point, whatever may have been the opinion of some canonists in the past. It does not matter who the woman is, or what is her character.

(*b*) The abduction must be by violence, not simply by seduction. The words *raptus, raptor* imply the idea of violence. When the legislator speaks of "detention," which is equivalent to "abduction," he uses the qualificative, "violent"; if it is not used with *raptus* it is that there was no need of it. This was the interpretation of the law of Trent. The violence may be *physical*—carrying off a person by force; or *moral*—using threats and fear. Fraud and deceit are also admitted to suffice, because it is always true that the woman has been taken away against her will.

157. (*c*) For abduction properly so called the person should be removed from one place to another; and this was generally considered as an essential condition for the impediment, but the present law extends somewhat that of Trent and assimilates to abduction the violent detention of a woman in the place of her residence or in a place where she came freely. Here we have no removal or no violent removal from one place to another. It suffices, then, that the woman be in the power of the abductor, detained by him against her will in a place which is not safe for her. The interpretation of that condition, removal from one place to another, had given rise to many difficulties for which there will be no occasion any more.

(*d*) The abduction or detention must be for the purpose of marriage. That condition had not been explicitly formulated by the Council of Trent, but it was always understood by canonists and Congregations. Now it is required expressly by the law.

(*e*) The impediment continues as long as the abducted woman remains in the abductor's power, even if she would freely consent to marry him, and in this the impediment of abduction differs from that of fear. It ceases when the woman is separated from the abductor and restored to a place of safety. It is not enough that she should be able to go away; she must really be separated from him and no more under his influence or that of his friends. (Gasparri, n. 559.)

2.° EXTENT OF THE IMPEDIMENT

158. The impediment of abduction as distinct from that of fear, is one of the ecclesiastical law, and consequently it does not affect infidels directly, but only indirectly when they contract marriage with Christians. There will, in this case, be an impediment whether the baptized party was abductor or abducted, according to the common interpretation.

3.° DISPENSATION FROM THE IMPEDIMENT

159. The Church can dispense from this impediment and allow the woman to marry the abductor if she wishes, but the Holy See rarely does so and still more rarely does it delegate the power to do so. Even more, when faculties are granted to dispense from another impediment, the clause is often added, "provided that the woman was not abducted for the purpose of marriage." If the woman had been abducted, the faculties could not be used, even though the woman would, at the time, have been restored to a place of safety so that there would be no more impediment of abduction. (Gasparri, n. 561.) In those cases the circumstance of abduction should be mentioned in the petition for dispensation

Abductors incur excommunication. (De delictis, can. 2353.)

VIII. CRIME

A. Origin of the Impediment

160. It has always been felt that there was something unbecoming in an adulterer marrying his accomplice, or a murderer marrying the wife of his victim. Such crimes call for punishment, and the hope of marriage should not be an incitement to sin. The Roman law under Augustus forbade the woman convicted of adultery ever to contract marriage with any person whatsoever. Under Justinian those marriages were declared null. An ancient canon ascribed in the *Decretum* to St. Gregory the Great contains the same prohibition (c. 22, c. xxxii, q. 7); but other canons inserted likewise by Gratian in his "Decree" (c xxxi, q. 1) forbid marriage only between the adulterer and his accomplice or even forbid it only until proper penance has been done. Simple adultery, then, does not seem ever to have been a canonical diriment impediment, and at the end of the ninth century it had ceased to be a prohibitory one. It was different when to adultery was added another crime. A Council of Meaux in 845 decrees that an adulterer can not contract marriage with his accomplice if either of them had any part in the death of the first husband. This is substantially the impediment of adultery with conjugicide, only its conditions are not clearly defined as yet, and they remain undefined for some time. The Council of Tribur in 895 strongly condemns and apparently annuls a marriage contracted after adultery with a promise to marry. The decree of Gratian mentions that impediment also. Thus two kinds of impediments of crime were already admitted—one resulting from adultery with conjugicide; the other from adultery with a promise of, or an attempt at, marriage. Celestine III (1191-1198) established a third one—the impediment arising from conjugicide alone. The conditions for incurring those impediments were determined with greater precision as time went on, but the legislation on that point has remained substantially the same from the twelfth century to the present day.

B. Present Discipline

Can. 1075. Valide contrahere nequeunt matrimonium:

1.° Qui, perdurante eodem legitimo matrimonio, adulterium inter se consummarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum

matrimonium, etiam per civilem tantum actum, attentarunt;

2.° Qui, perdurante pariter eodem legitimo matrimonio, adulterium inter se consummarunt eorumque alter conjugicidium patravit;

3.° Qui mutua opera physica vel morali, etiam sine adulterio, mortem conjugi intulerunt.

161. § 1. There can be no valid marriage between:

1.° Those who during the same legitimate marriage have committed adultery and promised marriage to one another or attempted it, even by a merely civil act.

2.° Those who during the same legitimate marriage have committed adultery together, and one of them conjugicide.

3.° Those who by mutual co-operation, physical or moral, even without adultery, have caused the death of a partner.

1.° CONDITIONS FOR THE IMPEDIMENT

(*a*) The impediment of crime arises, in the first place, from adultery with a promise of, or an attempt at, marriage. The adultery must, as before, be real, not merely putative, consummated, and, according to the common interpretation, formal on the part of both accomplices. By an attempted marriage is understood one invalidly contracted "by words expressing consent or by some other sign involving a promise of consent" (S. C. de P. F., Jan. 14, 1844.) Concubinage is not considered as an attempted marriage, but civil marriage is, according to a decree of the

S. Congregation of the Sacraments, June 3, 1912, and the present law. (A. A. S., iv, p. 403.) (*b*) The impediment arises also from adultery with conjugicide, and (*c*) from conjugicide alone when the death results from the effective co-operation, physical or moral, of the two parties.

2.° BY WHOM IS THE IMPEDIMENT INCURRED?

162. The impediment does not affect the unbaptized except when they contract marriage with the baptized who on their side have incurred it. There is nothing in the law implying that ignorance ever excuses from the impediment of crime.

3.° DISPENSATION FROM THE IMPEDIMENT

163. (*a*) The Holy See dispenses and grants to Bishops power to dispense from the impediment of crime without much difficulty, except when it arises from conjugicide, in which case a very serious reason is required, particularly if the conjugicide is publicly known.

IX. CONSANGUINITY

I. GENERAL NOTIONS

1. NATURE OF CONSANGUINITY OR BLOOD RELATIONSHIP

164. Relationship is of three kinds—*blood relationship* or *consanguinity, spiritual relationship,* and *legal relationship.*

Consanguinity is the bond that unites persons of the same blood, *i.e.,* persons who descend from one common stock or one from the other within certain limits. The *stipes,* stock, is the person from whom the related parties descend; the *line* is the series of persons who come from the same stock. It is *direct* when the persons descend one from the other; it is called *collateral, transversal, oblique,* when the persons descend, not one from the other, but all from one common stock—two cousins are related in the collateral line. In that case there are two series of persons, one on each side of the common stock. If James and John are second cousins, there is a series of persons or line connecting James, and another connecting John with their great-grandfather, who is the common stock. The lines may be equal or unequal.

The *degree* is the measure of the distance between the persons who are related to one another.

2. DETERMINATION AND MULTIPLICATION OF BLOOD RELATIONSHIPS

Lib. II, De Personis, Can. 96. § 1. Consanguinitas computatur per lineas et gradus.

§ 2. In linea recta, tot sunt gradus quot generationes, seu quot personae, stipite dempto.

§ 3. In linea obliqua, si tractus uterque sit aequalis, tot sunt gradus quot generationes in uno tractu lineae: si duo tractus sint inaequales, tot gradus quot generationes in tractu longiore.

165. § 1. Consanguinity is computed by lines and degrees.

§ 2. In the direct line there are as many degrees as there are generations, or as there are persons, not counting the common stock.

§ 3. In the collateral line, if both sides of the line are equal, there are as many degrees as there are generations on one side; if they are unequal there are as many degrees as there are generations on the longer side.

(*a*) *Determination of relationships.* To define a relationship it is necessary to state whether it is in the direct or oblique line, simple or multiplex, and in what degree. The degree is determined by the number of generations or of persons forming the line. In the direct line there are as many degrees as there are persons, not including the common stock, or as many degrees as there are generations—grandfather and grandchild are in the second degree.

In the collateral line, according to the way of reckoning of the Roman law, of modern civil law, and also of the Eastern Church, there are as many degrees as there are generations, or as there are persons, on both sides of the line, the common stock not included—thus, second cousins would be in the sixth degree.

According to the Teutonic way of reckoning, adopted by the canon law of the Latin Church, there are as many degrees as there are generations on one side, or as there are generations between one of the parties and the common stock, or as there are persons on one side of the line, not including the common stock; and if the two sides of the line are unequal it is the longer one which determines the distance of relationship. However, in those cases the Roman Curia usually demands that the distance on either side be indicated. Thus, between uncle and niece the distance is of two degrees on one side and one on the other; this is expressed by stating that they are in the second degree of the collateral line mixed with the first or joining the first, *tangente primum.*

166. (*b*) *Multiplication of relationships.* Whenever two persons descend from several common stocks, there are between them several relationships, they derive common blood from several sources. Under the former law, even when there was only one common stock there were several relationships if the parties were connected with it in several ways, or through different lines—the common blood reaching the parties through several channels. This may happen when parties have contracted marriage with relations, or when a person would marry successively two parties related among themselves, or when two parties related among themselves marry parties who on their side are related among themselves. The children in those cases are liable to be connected in several ways to the same persons. Under the present law there are several relationships only when there are several common stocks.

II. THE IMPEDIMENT

A. Ancient Discipline

167. The Mosaic law commanded Israelites to marry within their own tribe and kindred (Num. xxxvi., 7, 8); at the same time it forbade any man to "approach her that is near of kin to him," and specified that marriage is prohibited between parents or grandparents and their children or grandchildren, between brothers and sisters, aunts and nephews (Lev. xviii, 6-20). Nothing is added to that legislation in the New Testament. The ancient Roman law seems to have forbidden marriage between relatives generally, but this was too severe and did not last long. Under the emperors, marriage was forbidden in the direct line indefinitely and in the collateral line to the third degree according to the Roman way of reckoning, *i.e.,* between brothers and sisters, nephews and aunts, but not between first cousins.

The Church, growing up in the Roman empire, accepted the provisions of the Mosaic and Roman laws without adding any prescriptions of her own for a long time. It is only in the fourth and fifth centuries that we find indications of an independent canonical legislation. Christian sentiment, however, was against marriages between near relatives, and the tendency grew stronger and stronger to apply more severely the prohibitions of Leviticus. St. Augustine saw in this a means of fostering a spirit of charity and multiplying the bonds of friendship.

168. After the fall of the Western empire the Councils took the matter in hand more and more. In the sixth century they extended the impediment of consanguinity to the sixth degree according to the Roman way of reckoning. (Clermont, 535, c. 10). Some time after, it was extended to the seventh, because Leviticus forbids marriage between relations, and relationship in Roman law, when it is question of successions, extends to the seventh degree. (Rome, 721, c. 8, 9.) In the course of the eighth and ninth centuries, the Church, brought into close contact with the Germanic races, adopted their way of counting the impediments. About the same time, under the influence of circumstances which are imperfectly known, custom and popular practice extended the impediment to the seventh degree according to the Germanic way of counting, which would be the fourteenth according to the Roman way. That discipline was not introduced without difficulty nor did it meet everywhere with the same success, but in the beginning of the twelfth century it is spoken of as the common law. Probably the impediment was not a diriment one to the remotest degree, but even so it extended too far; and the Lateran Council, in 1215, limited it to the fourth degree in the collateral line. The Lateran law remained in force to our own times. Several of the Fathers at the Council of Trent asked that the impediment be reduced to the third degree; the same desire was expressed in the Vatican Council without any change being obtained. Dispensations from the fourth and third degree had become very frequent and it was felt that there was not, at the present time, the same social reason for the impediment as existed in the Middle Ages, when communications were so difficult and relations so limited; hence it has been decided to reduce it to the third degree.

B. Present Discipline

Can. 1076. § 1. In linea recta consanguinitatis matrimonium irritum est inter omnes ascendentes et descendentes tum legitimos tum naturales.

§ 2. In linea collaterali irritum est usque ad tertium gradum inclusive, ita tamen ut matrimonii impedimentum toties tantum multiplicetur quoties communis stipes multiplicatur.

§ 3. Nunquam matrimonium permittatur, si quod subsit dubium num partes sint consanguineae in aliquo gradu lineae rectae aut in primo gradu lineae collateralis.

169. § 1. In the direct line consanguinity invalidates marriage between all ascendants and descendants, whether legitimate or natural.

§ 2. In the collateral line marriage is invalid to the third degree inclusively, but the impediment is multiplied only with the multiplication of the common stock.

§ 3. Marriage shall never be permitted when there is a doubt that the parties are related in some degree of the direct line or in the first degree of the collateral line.

1.° EXTENT OF THE IMPEDIMENT

In the direct line marriage remains forbidden in all degrees of relationship, and this by the natural law itself—at least more probably. In the collateral line the impediment extends only to the third degree, to second cousins—not to third cousins, as it did before. We are thus going back to the discipline of the early Church. The legislation which reached the highest point of severity in the twelfth century has gradually become more lenient.

2.° DISPENSATION FROM THE IMPEDIMENT

170. Dispensation may be obtained from the third and second degree in the collateral line, or the second mixed with the first, between first cousins or between uncle and niece. The first degree in the direct line is certainly, the others are probably, impediments of the natural law, as well as the first degree in the collateral line; and for that reason the Church never gives a dispensation from those impediments.

If a marriage had been contracted with such an impediment—v.g., between brother and sister, as may happen among pagans or in cases of illegitimate relationship—it is probable that the marriage could not be revalidated; but it would also be probable that, if both parties are unbaptized, it is valid; and, therefore, no other marriage is permissible. In practice, if the impediment is public, the parties ought to be separated, at least to avoid scandal. In any case, to permit them to remain together it would be necessary to refer the matter to Rome; and likewise to allow a new marriage, unless the former one had been dissolved by the application of the Pauline Privilege or by Papal dispensation.

What has been said suffices to show how far unbaptized persons are bound by the impediment of consanguinity. Civil codes have the same impediment, but usually it does not go beyond the third Roman degree.

X. AFFINITY

A. Former Discipline

171. (*a*) The law of Moses prohibited marriage between a man and his daughter or grand-daughter-in-law, between a man and his deceased brother's widow or the widow of his father's brother. (Lev. xviii, 8-18; xx. 20.) Under the Roman law, affinity was an impediment only in the direct line, and, moreover, it arose not from carnal intercourse but from marriage as such. (Wernz, n. 429; Esmein, v. i., p. 375.)

(*b*) There is no record of any ecclesiastical legislation on this point during the first centuries. The Church conformed to the civil prescriptions and also probably to those of the Mosaic law, because they were in conformity with the demands of the natural law. When St. Basil the Great forbade a man to marry the sister of his deceased wife, to those who objected to his ruling he answered that this had always been the law at Cæsarea. Several particular Councils successively sanctioned that law. In the sixth and seventh centuries the impediment of affinity began to extend beyond the Mosaic regulations; but so far it continued to arise as in the Roman law from true marriage as such. Only about the eighth centuries did affinity come to be looked upon as the result of carnal intercourse, licit or illicit, on the principle laid down by St. Augustine and by St. Paul himself (1 Cor. vi, 16) that sexual relations make parties one flesh. Then, following the same development as that of consanguinity, the impediment of affinity was extended by custom as far as the seventh degree.

172. (*c*) Moreover, to the affinity which exists between a person and the blood relations of the one with whom he or she had intercourse, was added a second kind which existed between one party and the relations by marriage of the other; and a third kind existing between the blood relations of one of the parties and the blood relations of the other; and even a fourth kind existing between the kin of a first husband and the children born of a second marriage. The Fourth Lateran Council (c. 50; c. 8, x, tit. xiv.) maintained only the first kind of affinity as defined above, and reduced it to the fourth degree, at least in the collateral line, without making any distinction between licit and illicit affinity.

(*d*) The Council of Trent further reduced the impediment of illicit affinity to the second degree in the collateral line; in the direct line, affinity, whether licit or illicit, continued to extend to the fourth degree and, some say, indefinitely. There was no more change in the legislation down to the present day. In the Vatican Council some Bishops asked that the impediment of illicit affinity be abolished altogether, and that of licit affinity be limited to the first degree. Others asked only that one be limited to the first, the other to the second or third. Those desires are now satisfied, at least in part.

B. Present Discipline

I. NATURE OF THE IMPEDIMENT

173. As for consanguinity, it is in the introductory canons of the second book, *De Personis,* that we find the definition of affinity and the rules for its determination.

Can. 97. § 1. Affinitas oritur ex matrimonio valido sive rato tantum sive rato et consummato.

§ 2. Viget inter virum dumtaxat et consanguineos mulieris, itemque mulierem inter et viri consanguineos.

§ 3. Ita computatur ut qui sunt consanguinei viri, iidem in eadem linea et gradu sunt affines mulieris, et vice versa.

174. § 1. Affinity arises from valid marriage, whether ratified only or ratified and consummated.

§ 2. It exists only between the man and the blood relations of the woman, and likewise between the woman and the blood relations of the man.

§ 3. It is reckoned in this wise that the blood relations of the man are related to the woman by affinity in the same line and the same degree, and vice versa.

1. The present law brings back the original conception of affinity, for which only valid marriage was considered, not carnal relations. Henceforth affinity will be produced by every marriage provided it be valid, even though not consummated; but it is

not produced by any carnal relations outside of marriage and there will be no question any more of illicit affinity.

2. As has been the case since the Lateran Council, there is only one form of affinity, and the principle still holds: *Affinitas non parit affinitatem.* It does not exist, for example, between the brother of the wife and the sister of the husband.

3. The husband and wife are considered as one flesh, so that the relations of the husband are related by affinity to his wife in the same manner as they are related to him by blood.

II. EXTENT AND MULTIPLICATION OF THE IMPEDIMENT

Can. 1077. § 1. Affinitas in linea recta dirimit matrimonium in quolibet gradu; in linea collaterali usque ad secundum gradum inclusive.

§ 2. Affinitatis impedimentum multiplicatur:

1.° Quoties multiplicatur impedimentum consanguinitatis a quo procedit;

2.° Iterato successive matrimonio cum consanguineo conjugis defuncti.

175. § 1. Affinity in the direct line annuls marriage in any degree; in the collateral line it annuls it to the second degree inclusively.

§ 2. The impediment of affinity is multiplied:

1.° Whenever the impediment of consanguinity from which it proceeds is multiplied.

2.° By successive marriages with blood relations of the deceased spouse.

1. It is now certain that affinity invalidates marriage in all the degrees of the direct line; in the collateral line it invalidates in the first and second degrees, not in the third or fourth, as was the case up to the present.

2. There are only two causes of multiplication of affinity under the present discipline:

(*a*) Multiplication of relationship; thus when the husband is related by blood in two ways to a certain person, the wife is related by affinity to that same person in two ways also.

(*b*) Successive marriages; if a man married successively two sisters he would contract a twofold impediment of affinity with a third sister.

III. DISPENSATION FROM THE IMPEDIMENT

176. Under the former legislation dispensation from the impediment of affinity was usually not granted in the first degree of the direct legitimate line. Some canonists even maintained that dispensation could not be granted in that degree; in reality it was granted, very rarely, but still a few times. (S. Pœn., Dec., 1911; N. R. T., 1912, p. 528.) This is sufficient to prove that the impediment of affinity is purely ecclesastical in all its forms and degrees, and therefore not binding on the unbaptized; at least as long as they remain unbaptized, for if they become Christians they have the impediment. The same principles hold under the new law.

XI. PUBLIC DECENCY

A. Former Discipline

177. The Roman law forbade the son to marry the betrothed of his father, and the father to marry the betrothed of his son. Still, it is doubtful if we have to look here for the origin of the canonical impediment. Its sources are obscure and difficult to trace. It is unknown to writers of the ninth century like Hinkmar of Rheims and Benedict the Levite. (Wernz, n. 48; Esmein, vol. i, p. 146.) It is positively rejected by the author of a decretal ascribed to Pope Benedict. (C. 18, c. xxvii; q. 2.) Other texts, on the contrary, which are inserted in the *Decretum* and ascribed, some to St. Gregory the Great, others to a Council of Rome (c. 11, 14, 15; c. xxvii, q. 2), clearly show the existence of the impediment at the time the decree was compiled; for, although their origin be uncertain, they represent the discipline of the Church in the eleventh and the twelfth century.

At first, the impediment of public decency was not clearly distinguished from that of affinity. It was recognized that the union existing between husband and wife establishes such close relations between the husband and his wife's kin that it seemed unbecoming and dangerous for morality to permit marriage between them. But for some that union was complete only when the marriage was consummated; for others it existed substantially as soon as the marriage was contracted; and for others, again, the contract of betrothment, which was then generally celebrated with so much solemnity, had almost the same effects as marriage itself.

When it was settled that affinity was produced by the consummation of marriage or carnal intercourse, public decency could become a distinct impediment, arising from the contract of marriage or of betrothment as such. Its foundation was the union of wills implied in the mutual consent which made the parties morally one and hence bound each one to the blood relations of the other, thus making marriage between them unbecoming. This development in the theory of the impediment was reached in the twelfth century. It remained to define its conditions and extent.

Some texts would seem to imply that it existed between the husband and all the blood relations of the wife and vice versa; and that it admitted of the same forms as affinity itself. The Fourth Lateran Council limited it in the same manner as affinity. The Council of Lyons, in 1274, threatened to go further and even to suppress the impediment altogether.

The question came up again in the Council of Trent. Boniface VIII had decreed that the impediment would not arise from betrothals that would be uncertain, conditional, or null for want of consent. (C. unicum, in Sexto, IV, 1.) The Council decided that invalid betrothment, whatever the reason for the nullity, would not produce the impediment, and that from valid betrothment would arise an impediment only in the first degree. The impediment arising from ratified marriage continued to extend to the fourth degree, and it continued also to be produced by invalid marriage as long as the nullity was not due to want of consent.

The change introduced by the new law in the concept of affinity implied a change also in the concept of public decency.

B. Present Discipline

Can. 1078. Impedimentum publicae honestatis oritur ex matrimonio invalido, sive consummato sive non, et ex publico vel notorio concubinatu; et nuptias dirimit in primo et secundo gradu lineae rectae inter virum et consanguineas mulieris, ac vice versa.

178. The impediment of public decency arises from invalid marriage, whether consummated or not, and from public or notorious concubinage; and it annuls marriage in the first and second degree of the direct line between the man and the blood relations of the woman and vice versa.

1. Betrothals produce no canonical impediment, at present; valid marriage, which produced formerly the impediment of public decency when it was only ratified, now produces the impediment of affinity. Public decency now arises from two causes:

(*a*) From invalid marriage. Even if consummated, invalid marriage produces the impediment, not of affinity, as before, but only of public decency. It does not make any difference what the cause of the nullity was, except that there must have been an attempt at marriage, the contract although invalid must have the *figura matrimonii* in the sense explained before.

(*b*) From public or notorious concubinage. Occasional sexual relations do not produce the impediment, either of affinity, as they did formerly, or of public decency. Even concubinage, to produce the impediment, has under the present law to be public or notorious. A purely civil contract of marriage constitutes a state of public concubinage.

179. 2. The impediment of public decency is computed like that of affinity, and exists between the man and the blood relations of the woman and vice versa; it does not extend to the relations by marriage or to the affines. Henceforth it will annul marriage only in the direct line, and even in this it is limited to the first and second degrees. A man can not marry validly the daughter or granddaughter of the woman with whom he has contracted an invalid marriage or lived in public concubinage, but he can marry her sister.

XII. SPIRITUAL RELATIONSHIP

A. Origin of the Impediment

180. (*a*) Baptism being a new birth, Christians, from the beginning, looked upon those from whom they had received that sacrament as spiritual parents. This spiritual paternity was little by little extended to the sponsors and to those who had assisted in the preparation of the catechumens; then to the ministers and sponsors in the sacrament of Confirmation, which completes Baptism; and also, according to some, to the minister of the sacrament of Penance. This was the *paternitas* and *maternitas spiritualis,* to which was added the *compaternitas* or *commaternitas,* direct or indirect; *i.e.,* the spiritual relationship between the sponsors and the parents of the baptized person or between the baptized person and the husband or wife of the sponsor; then the *confraternitas* or relationship between the baptized person and the children of the spiritual father or mother. Once those relationships were admitted, it was natural that they should be considered as impediments to marriage.

181. (*b*) The Council in Trullo in 692 prohibited marriage between the *compatres* and the *commatres;* the Council of Rome in 721 enacted the same ordinance, and gradually the other forms of spiritual relationship became impediments also. When the custom had been introduced of having several sponsors at Baptism, the impediments of spiritual relationship became so numerous that the need of a reform was felt by all. It was effected by the Council of Trent.

182. (*c*) The Council of Trent decreed (1) that there should not be more than one godfather and one godmother for each baptism or confirmation; (2) that the *fraternitas* and the *compaternitas indirecta* were abrogated. There remained an impediment of spiritual relationship (1) between the minister of the sacraments of Baptism or Confirmation and the sponsors on one side, and the person baptized or confirmed on the other; (2) between the minister and sponsors on the one side and the parents, legitimate or illegitimate, of the baptized or confirmed party on the other.

The conditions for contracting the impediment are (1) that Baptism or Confirmation be valid; (2) that the sponsors have the intention of acting as such; (3) that they, personally or by proxy, touch physically the person baptized or confirmed at the moment the sacrament is administered; (3) that they be not legitimately rejected by the Bishop or pastor; (5) that they be baptized, or confirmed for Confirmation. This law had been in force to the present time. (Tanquerey, n. 1097.)

B. Present Discipline

Can. 1079. Ea tantum spiritualis cognatio matrimonium irritat, de qua in can. 768.

183. Only that spiritual relationship annuls marriage which is mentioned in can. 768. (It arises only from Baptism and exists between the baptized person and the minister, the baptized person and the sponsor.)

No longer does any impediment of spiritual relationship arise from Confirmation. That which arises from Baptism is restricted to the *paternitas,* the *compaternitas* being abolished; *i.e.,* it exists only between the baptized person on one side, the minister and the sponsor on the other.

The conditions for contracting the impediment remain the same; there is no serious doubt that it is produced by private as well as by solemn Baptism.

XIII. LEGAL RELATIONSHIP

A. Origin of the Impediment

184. Legal relationship arises from the act of adoption, sanctioned at law, by which a person receives as his child one who is not so by nature. Roman law recognized and regulated adoption and made it an impediment: (1) Between the adopter and the adopted and the descendants of the latter who were under his authority at the time of the adoption—this was by way of quasi-paternity, and the impediment continued even after emancipation or the dissolution of the adoption; (2) between the adopted and the children of the adopter, by way of quasi-fraternity; (3) between the adopted and the adopter's wife and between the adopter and the adopted's wife.

The Church accepted these provisions of the Roman law at least substantially and gave them canonical force. "The intimacy consequent upon these legal relations was recognized as ample ground for placing a bar on the hope of marriage, out of respect for public propriety, and in order to safeguard the morals of those brought into such close relations."

But in countries which were not under the Roman law or where the Roman law had been modified in a notable manner, the question arose whether there existed the impediment of legal relationship. The answer was that whenever the substantial elements of the Roman adoption law are retained in the new legislations the Church recognizes this relationship as a diriment impediment. Hence a new difficulty. There were in Roman law, since the time of Justinian, two kinds of adoption, the perfect and the imperfect adoption. The essential effect of the perfect adoption was that it placed the adopted under the control of the adopter whose name he took, made him a member of his family and his necessary heir. By imperfect adoption the adopted did not come into the family. Many canonists had maintained that only perfect adoption gave rise to a marriage impediment; others that imperfect adoption had the same effect. The new law removes all doubts.

B. Present Legislation

Can. 1080. Qui lege civili inhabiles ad nuptias inter se ineundas habentur ob cognationem legalem ex adoptione ortam, nequeunt vi juris canonici matrimonium inter se valide contrahere.

185. Those whom the civil law considers as unable to marry one another, because of the legal relationship arising from adoption, are, by canon law, incapable of contracting marriage validly.

We have seen before that wherever legal relationship renders a marriage unlawful by civil law, the marriage is forbidden by ecclesiastical law. Here it is enacted that if the law of the country considers legal relationship as an obstacle to the validity of the marriage contract, that same relationship constitutes, by canon law, a diriment impediment to marriage. The Church, therefore, now gives canonical value to the prescriptions of modern legislations on that point, as formerly she gave canonical value to the prescriptions of the Roman law.

To determine on what conditions the impediment of legal relationship is produced and how far it extends, the laws of the country will have to be consulted.

CHAPTER V

OF THE MATRIMONIAL CONSENT

I. THE CONSENT ITSELF: ITS IMPORTANCE AND QUALITIES

Can. 1081. § 1. Matrimonium facit partium consensus inter personas jure habiles legitime manifestatus; qui nulla humana potestate suppleri valet.

§ 2. Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat jus in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem.

186. § 1. Marriage is constituted by the duly manifested consent of persons juridically able to marry; which consent can not be supplied by any human power.

§ 2. The marriage consent is an act of the will by which each party gives and accepts a perpetual and exclusive right over the body for the exercise of acts suitable of themselves for the procreation of children.

187. 1. (*a*) Two different theories of marriage were in vogue for some time in the schools. For Gratian and the school of Bologna, marriage is begun by consent, but it becomes complete, indissoluble, and a sacrament only when it is consummated. For Peter Lombard and the school of Paris, marriage contracted by mutual consent alone is a true and complete marriage, absolutely indissoluble, and, between Christians, a sacrament. This second theory had the support of early Christian writers, received the approval of Sovereign Pontiffs, particularly of Alexander III, and soon prevailed. It was conceded, however, to the first theory that, whilst non-consummated marriage is a complete marriage and a sacrament, yet it is not absolutely indissoluble. This quality belongs fully to the marriage ratified and consummated. Thus mutual consent is sufficient to constitute marriage in its essence; consummation adds an accidental perfection and more absolute indissolubility. (Gasparri, n. 770; De Smet, n. 59.)

188. (*b*) To have such efficacy, consent must be given by persons who are not prevented by any law from contracting marriage; and since it must be mutual, and, among Christians, sacramental, it must be known to both parties, and manifested outwardly and legitimately; *i.e.,* in the form prescribed, if there is one.

(*c*) Consent, sufficient in itself, is so necessary that while "in a civil contract the absence of consent may sometimes, for certain reasons, be supplied by the law, no human power can do this in the case of marriage." (Pius VI, July 11, 1789.) "It can not be supplied by paternal authority or by the supreme authority of the Church or of the State; for it belongs exclusively to the bride and bridegroom to transfer to each other ownership of their bodies, and to take upon themselves the yoke of marriage."

189. 2. The marriage consent is an act of the will with a definite, specific object.

(*a*) The act of the will must really exist, actually or virtually, not in a merely interpretative manner. It is the act of the will that constitutes the contract. Acts of the intellect, dispositions of mind, opinions, errors of judgment, are considered only in so far as they affect the act of the will.

(*b*) The consent is a mutual one.

(*c*) The essential object of the consent is a right over each other's body with a view to certain specific acts.

(*d*) That right must be granted and accepted as perpetual and exclusive.

II. OBSTACLES TO VALID CONSENT: IGNORANCE, ERROR, SIMULATION, VIOLENCE, OR FEAR

1.° IGNORANCE

Can. 1082. § 1. Ut matrimonialis consensus haberi possit, necesse est ut contrahentes saltem non ignorent matrimonium esse societatem permanentem inter virum et mulierem ad filios procreandos.

§ 2. Haec ignorantia post pubertatem non praesumitur.

190. § 1. In order that matrimonial consent be possible it is necessary that the contracting parties at least be not lacking in the knowledge that marriage is the permanent union of man and woman for the procreation of children.

§ 2. Such ignorance is not presumed in those who have attained the age of puberty.

1. We can not consent to what we do not know; the marriage consent is not possible without some.

at least confused, knowledge of what constitutes the essential object of the marriage contract; and this is the mutual right and obligation to the conjugal act: *Jus in corpora in ordine ad actus de se aptos ad generationem prolis.* Hence a person who would marry without having any idea of that right and obligation would not marry validly. Clear and explicit knowledge is not necessary. If one, knowing that the purpose of marriage is the procreation of children, would enter the contract with that in view and would consent to all it implies, although having no distinct idea of what is required for generation, there would be confused knowledge of, and consent to, what constitutes the essential object of the contract, and the marriage would be valid; even if the party was so disposed that if he knew what the act of generation really is, he would not give his consent. But at least that confused knowledge of the substantial object of the contract is necessary.

191. 2. Ignorance of the primary purpose of marriage is easily admitted in children. In the ancient legislation it was always presumed before the age of puberty; after that age, on the contrary, knowledge is presumed. The presumption admits of proofs to the contrary, but it would require strong evidence to obtain the annulment of a marriage on the ground of ignorance in a person of age to marry. Frequently in such cases the Congregations find the evidence insufficient, but it is possible to obtain a dispensation *super matrimonium ratum et non consummatum.* (A. S. S., v., p. 555.)

of the nullity of the first consent. (Causa Osnabrucensis, Jan. 11, 1912; A. A. S., vol. iv, p. 186.)

That renewal may be made in secret if the fear was occult: Continuance of cohabitation will suffice for that. When the fear was public, the consent must be renewed in the form required for the celebration of marriage. Hence, when the fear is proved juridically, the question is not even raised whether the marriage was not revalidated by several years of cohabitation, wherever the solemn form of marriage is necessary for the validity. (A. A. S., vol. iv, p. 115.)

210. 7. The right of challenging a marriage on the ground of violence and fear belongs exclusively to the one who has suffered the injustice; and, moreover, he would forfeit his right, according to an instruction of June 20, 1883, if he had continued to cohabit, for a long time, without protesting when liberty and opportunity for doing so were not wanting.

Numerous examples of marriages challenged on the ground of fear are found in the Acta Apostolicæ Sedis. Cf. vol. ii, pp. 348, 886; vol. iii, pp. 244, 661; vol. iv, pp. 108, 646, etc.

III. MANIFESTATION OF THE CONSENT

Can. 1088. § 1. Ad matrimonium valide contrahendum necesse est ut contrahentes sint praesentes sive per se ipsi sive per procuratorem.

§ 2. Sponsi matrimonialem consensum exprimant verbis; nec aequipollentia signa adhibere ipsis licet, si loqui possint.

211. § 1. In order to contract marriage validly, it is necessary that the parties be present either personally or by proxy.

§ 2. The spouses shall express the matrimonial consent by words; nor are they permitted to use equivalent signs when they are able to speak.

1. Before the Council of Trent and also, according to the common opinion, confirmed by several decisions of Congregations, under the discipline of the decrees *Tametsi* and *Ne temere,* marriage could be contracted by letter, although it was recommended not to permit such mode of proceeding without grave reasons. The present law rejects it altogether and makes the presence of the parties either personally or by proxy a condition for the validity of the contract. In marriages by letter it was difficult, although not impossible, to observe the formalities demanded for the public celebration of marriage; hence doubts and disputes would arise afterward. They will be avoided by obliging the parties to appear in person or send a representative, which can always easily be done. (A. A. S., April 30, 1910, p. 300; De Smet, n. 70; Nouvelle Revue Théologique, Août, 1910, p. 460; Canoniste Contemporain, 1910, p. 366.)

212. 2. Innocent III, asked by a Bishop how the matrimonial consent should be expressed, answered that, for the Church, words were necessary. (IV, X, 1, c. 25.) From this some had concluded that there was a grave obligation to use words in contracting marriage; but others interpreted the Papal declaration as containing only a counsel. The Council of Trent did not decide the question, but the present canon clearly enunciates the obligation, explicitly stating that the equivalent signs, *æquipollentia signa,* which, according to the interpretation of Innocent's decree, given by Abbas Panormitanus, might serve as substitutes for words, may not be used now when the parties can speak. The pastor is to see that the law is observed. It is not binding under pain of nullity, but there can be little doubt that it is binding under pain of grave sin.

IV. MARRIAGE BY PROXY

Can. 1089. § 1. Firmis dioecesanis statutis desuper additis, ut matrimonium per procuratorem valide ineatur, requiritur mandatum speciale ad contrahendum cum certa persona, subscriptum a mandante et vel a parocho aut Ordinario loci in quo mandatum fit, vel a sacerdote ab alterutro delegato, vel a duobus saltem testibus.

§ 2. Si mandans scribere nesciat, id in ipso mandato adnotetur et alius testis addatur qui scripturam ipse quoque subsignet; secus mandatum irritum est.

§ 3. Si, antequam procurator nomine mandantis contraxerit, hic mandatum revocaverit aut in amentiam inciderit, invalidum est matrimonium, licet sive procurator sive alia pars contrahens haec ignoraverint.

§ 4. Ut matrimonium validum sit, procurator debet munere suo per se ipse fungi.

213. § 1. Besides what may be prescribed by diocesan statutes, in order that a marriage may

be contracted validly by proxy, it is necessary to have a special mandate to contract marriage with a specified person, signed by the principal, and either by the parish priest or the Ordinary of the place in which the mandate is given or by a priest delegated by either of these, or by two witnesses.

§ 2. If the principal is not able to write, this fact is to be noted in the document, and an additional witness must sign it, else the mandate is null.

§ 3. If, before the proxy makes the contract in the name of the principal, the latter has revoked the commission, or has fallen into insanity, the marriage is invalid, even though both the proxy and the party with whom the contract was made would be unaware of the change.

§ 4. In order that the marriage be valid the proxy must discharge his office personally.

1. The Church has always recognized the validity of marriage contracted by proxy, on certain conditions, which are enumerated by Boniface VIII in the last chapter De Procuratoribus, tit. xix, lib. i in Sexto.

2. After the Council of Trent, the question was raised whether the form it prescribed for marriage did not suppose that the parties should appear personally before the parish priest and the witnesses. Commonly, however, it was held that the decree

Tametsi and the more recent decree *Ne temere* had not modified the existing discipline on that point.

214. 3. The present canon admits the principle of the validity of marriage by proxy and it defines with greater precision than had been done before what formalities will henceforth have to be observed for the validity of the contract:

(*a*) A general commission to act in the name of another does not imply power to contract marriage for him. Special authority must have been received for that; and, moreover, the principal must have specified the person with whom marriage is to be contracted; the choice is not to be left to the proxy.

In order that there be no misunderstanding or doubt about that commission, it will not suffice, henceforth, that it be given orally, but it will have to be committed to writing. Moreover, that there be no question about the authenticity of the document, certain formalities are prescribed here, similar to those necessary for the celebration of marriage itself, or for the contract of betrothment. The document has to be signed by the one who gives the commission, in whose name the marriage is to be contracted, and by the pastor or the Ordinary of the place, or two witnesses. It will be noted that the parish priest who is to sign the mandate is the one who has jurisdiction in the place in which that contract is made, as for marriage, but not the parish priest of the party. The Ordinary is also the Ordinary of the place. Just as for marriage, the parish priest or Ordinary can act through a delegate, provided he be a priest. If the pastor or the Ordinary or a priest delegated by either of them can not be had, then two witnesses must sign the document. No special qualifications are required in the witnesses.

215. (*b*) If the party who wishes to contract marriage by proxy is unable to write, mention of this is to be made in the document and another witness added to those regularly demanded.

(*c*) As the proxy or delegate is acting in the name of the principal, it is on the latter's consent that the validity of the contract depends. If that consent does not exist at the time the marriage is celebrated and the other party gives his or hers, the marriage can not be valid. It does not matter whether or not the proxy or the other party know that the consent has ceased to exist. In other matters the withdrawal of the consent takes no effect until it has been made known to the agent. Law supplies, meanwhile, the consent which is wanting; but no power on earth can supply the consent necessary for marriage.

The consent ceases to exist when it is withdrawn or when the commission is revoked. It may be revoked tacitly or expressly, implicitly or explicitly, publicly or privately, or even internally; but if the fact of the revocation can not be proved, the commission will be considered as continuing, and the marriage will be held as valid in the external, although it be null in the internal, forum.

The consent perseveres virtually even if the one who gave it were not thinking of it or were asleep or drunk. But it does not persevere when he loses the use of reason and becomes insane, as is expressly declared by the law. Sanchez assimilated the state of insanity to that of sleep, but canonists commonly treated it as moral death. There is no more doubt that it suspends consent.

4. A delegate can not generally subdelegate; here he is expressly forbidden to do so.

As the above prescriptions have an annulling clause, they are to be observed under the pain of nullity of the delegation and consequently of the contract.

V. MARRIAGE BY INTERPRETER

Can. 1090. Matrimonium per interpretem quoque contrahi potest.

216. Marriage can be contracted also through an interpreter.

Before the Council of Trent there was no doubt about the validity of marriages contracted through an interpreter. But after the publication of the decree *Tametsi* some authors, like Pontius, asked how the pastor and witnesses could fulfil their office if they did not understand what the parties said. Commonly it was held that here, as in other contracts, the consent could be sufficiently ascertained through an interpreter, provided he be trustworthy. Still, there remained some doubt. It is now removed; marriage through an interpreter is certainly valid and also lawful under certain conditions.

VI. LICITNESS OF THE FOREGOING MARRIAGES THROUGH PROXY OR INTERPRETER

Can. 1091. Matrimonio per procuratorem vel per interpretem contrahendo parochus ne assistat, nisi adsit justa causa et de authenticitate mandati vel de interpretis fide dubitari nullo modo liceat, habita, si tempus suppetat, Ordinarii licentia.

217. The pastor shall not assist at a marriage which is to be contracted by proxy or by interpreter, unless there be a just cause for it, the authenticity of the commission and the trustworthiness of the interpreter be beyond all possible doubt, and the permission of the Ordinary be obtained if time permits.

Although marriages contracted by proxy or by interpreter be valid, and sometimes permissible, they are liable to give rise to difficulties and do not fully satisfy the demands of the Church's present legislation; therefore this manner of entering the contract is allowed only by way of exception, when there is a just cause for departing from the ordinary way of proceeding. Then precautions are to be taken to remove all danger of error and fraud; the authenticity of the mandate and the reliability of the interpreter must be above suspicion, and the permission of the Ordinary must be obtained when time permits, because the matter is of a somewhat serious nature and the decision should as much as possible be left to him.

VII. CONDITIONAL MARRIAGE

1.° NATURE AND SPECIES OF CONDITIONS

218. (*a*) A condition in a contract is a circumstance to which the consent is attached, and on which the value of the contract depends. This may be in two ways: (1) The fulfilment of the condition may put an end to the contract; we have then a *voiding condition.* Or (2) the fulfilment of the condition may cause the contract, held in suspense till then, to have its effect: This is a *suspensive condition.*

In relation to a contract which is indissoluble, like marriage, there can be no question of voiding conditions.

219. (*b*) A condition differs from a mode, cause, interpretative intention, or antecedent error. A mode is an "accessory and supervenient clause added to the contract already constituted"; it is not part of the contract, as if persons would agree to contract marriage and then add that they will not fulfil some of its obligations. The cause may prompt a man to consent, but, once he is determined, he gives the consent absolutely and independently of the cause. Thus, a man may marry a certain woman because he thinks she is honest, and, having no doubt about it, he gives his consent absolutely. Or he may be in such disposition that if the thought occurred to him that she may be dishonest he would not marry her; but, in reality, he does marry her, without making his consent depend on her being honest: We have here only an interpretative intention. Or, again, a man may be convinced that marriage may be dissolved and contract with that conviction, but giving his consent absolutely without making it depend on the possibility of a divorce. We have here an error, but not a real condition.

A condition, to be real, must have been placed actually and not in a merely interpretative manner; it must be an integral part of the contract, the consent must be attached to it and depend upon it.

220. (*c*) Conditions may be honest or immoral and leading to sin; possible or impossible, repugnant to the substance of the marriage contract; past, present, or future; contingent or necessary, that is, concerning a future and uncertain event, or one which is already past, or a future one which is already certain. Strictly speaking, conditions concerning events which are past, present, or necessary, *i.e.,* future, but already certain, are not real conditions, since they do not suspend the consent. They are, however, spoken of as conditions because, for us, who may often be not sure of their fulfilment, they practically do hold the contract in suspense or render it doubtful.

2.° ANCIENT LEGISLATION

221. In the early marriage legislation, as in the Roman law, there is no question of conditional marriages, probably because they rarely occurred, if at all. The first time a condition is mentioned, it is to declare it of no value. (c. 7, 8, c. xxvii, q. 2.) It seemed logical to conclude that since marriage, as distinct from betrothal, ought to be contracted *per verba de præsenti,* its validity should not be made to depend on a future event, and that either it was contracted absolutely, or remained a mere engagement. The argument, however, was not found conclusive, and the doctrine of conditional marriages received official recognition in the Decretals of Gregory IX, in which a special title is devoted to the subject. (lib. iv, tit. v, *De conditionibus appositis in desponsationibus.*) The great theologians of the thirteenth century, St. Thomas (Summa Theologica, pars 3ª supp., q. xlvii, art. 5) and St. Bonaventure, set forth in details the theory of conditional consent, which was now accepted by all.

The Council of Trent has no special decree on that point, but the one on the form of marriage which aimed at doing away with clandestine marriages seemed to strike also at the conditional contracts, which, taking place really when the condition is fulfilled and not when they are celebrated before the priest, would not satisfy the conciliar requirements. But canonists found a solution for that difficulty, and conditional marriages continued to be held as valid; still, they became less common; ordinarily they were not permitted except for a grave cause, and in modern times Bishops reserved to themselves the right to decide when the cause was sufficient. (Esmein, vol. i, pp. 171-178; vol. ii, pp. 216-218.) In the Greek Church it is not the practice to contract marriage conditionally, nor in the Protestant churches. Modern civil legislations generally do not recognize conditional marriages. (Wernz, n. 294, 306.)

3.° PRESENT LEGISLATION

Can. 1092. Conditio semel apposita et non revocata:

1.° Si sit de futuro necessaria vel impossibilis vel turpis, sed non contra matrimonii substantiam, pro non adjecta habeatur;

2.° Si de futuro contra matrimonii substantiam, illud reddit invalidum;

3.° Si de futuro licita, valorem matrimonii suspendit;

4.° Si de praeterito vel de praesenti, matrimonium erit validum vel non, prout id quod conditioni subest, exsistit vel non.

222. When a condition has been placed to the consent and not withdrawn:

1.° If it concerns the future and is necessary or impossible or dishonest, but not contrary to the substance of marriage, it is considered as non-existing;

2.° If it concerns the future and is against the substance of marriage, it invalidates the marriage.

3.° If it concerns the future and is honest, it suspends the marriage.

4.° If it concerns the past or the present, the marriage is valid or not according as the condition is fulfilled or not.

This canon sums up with greater precision the legislation in vigor for several centuries, and is little more than the application of the natural law.

Conditions are divided here into several categories: That on which the matrimonial consent is conditioned or made to depend may be something past, present, or future. If it is something future, it may be necessary, that is, bound to come and already certain in itself; or impossible; or dishonest without being contrary to the substance of the marriage; or it may be contrary to it; or it may be something lawful.

223. 1.° If the consent is conditioned on something past or present, the marriage is valid or not according as the condition is verified or not. This rule is general and no distinction is made here between conditions which are impossible, unlawful, etc., as long as they are past or present.

224. 2.° When the consent is conditioned on something future, several distinctions have to be made; future conditions are divided into three categories:

(*a*) To the first category belong those conditions the object of which is something necessary, impossible, or dishonest, but not contrary to the substance of marriage.

Necessary conditions are here assimilated to the impossible ones, which was ordinarily not done by ancient canonists; and whether the parties know the real nature of the condition and its effect on the contract the result will be the same. (Reiffenstuel, n. 45; Schmalzgruber, n. 72ff.; Gasparri, 844, 853, 865ff.; Wernz, n. 300, note.)

The validity of the marriage contracted with one of those conditions will, objectively, depend on the reality of the condition and its realization; but the law, wishing to favor marriage and to restrict the cases of nullity, presumes that the condition did not exist or was not meant seriously, and that, therefore, the marriage is valid from the beginning. But this is a presumption *juris,* not one of those which admit of no proof to the contrary; it could not be, for the Church can not supply a consent which is wanting, and she does not wish to treat as valid a marriage which is null. If, then, it is certain, from the confession of the parties in the internal forum, or from circumstances in the external forum that the consent was truly made to depend on the condition, we have to see whether the condition is realized or not. If it is impossible, the contract is null; if necessary, the contract is valid at once; if it was immoral and is not yet fulfilled, the contract is at least suspended; there is no obligation, or even right, to fulfil the condition, nor to wait for its fulfilment, but if it happened to become fulfilled the contract would hold. (Gasparri, n. 853; Wernz, n. 300, not so positively.)

225. (*b*) When conditions concern a future and contingent event, possible and honest, the marriage remains in suspense until fulfilment.

(1) If one of the parties would revoke his consent the subsequent verification of the condition would be of no effect, for the two consents must exist at the moment the contract is actually completed; the same would be true if one would lose the use of reason. The presumption *juris et de jure* that consummation of the marriage implies withdrawal of the condition has probably not been abolished. (Wernz, n. 298; De Smet, n. 87.)

(2) If the condition is not fulfilled, nor withdrawn, there is no marriage.

(3) Once the condition is fulfilled, the contract is complete without notifying the parish priest or the witnesses. The formalities prescribed for marriage have to be observed only when it is celebrated. If, however, the condition was to obtain a dispensation from the Holy See, the parties are required to renew their consent when the dispensation is applied to them. In order that the validity of the marriage may not be questioned in the external forum, proofs of the fulfilment of the condition should be had if the existence of the condition was publicly known.

226. (*c*) A condition which is repugnant to the substance of the matrimonial contract renders it invalid by the law of nature itself, supposing that it is a real condition, because in that case there is no true matrimonial consent—one of its essential elements is excluded.

Conditions are really repugnant to the substance of marriage when they are inconsistent with the essential object of the marriage contract or destructive of one of its essential properties.

The object of the marriage contract is the mutual right and obligation of the spouses to generative relations; its essential properties are unity, which includes fidelity, indissolubility, and sacramental dignity. Hence:

227. (1) To contract marriage on condition that there will be no children or a limited number, if it means that the spouses do not give to each other the right to the acts apt for the generation of children, or that these rights are transferred only for a limited time, is to place a condition which is contrary to the essential object of the marriage contract and annuls it. If it meant that the rights are transferred but they will not be used, we would be in presence, not of a condition forming an integral part of the marriage contract, as in the previous supposition, but only of an accessory modification of it. The right to the marital relations is essential, the actual use of it is not.

228. (2) Marriage contracted under condition of practising onanism will be null or invalid in the same manner, according as this will be a true condition or only a modal clause, a refusal of the right to generative relations or merely an intention of not fulfilling obligations really assumed.

(3) The condition that the offspring will not be allowed to be born alive, that drugs of sterility will be taken, is also against the substance of marriage, the primary purpose of which is the procreation of children; and if it became part of the contract, that is, if the party or parties meant to reserve that right in the contract, the marriage would be null. Conditions against the moral good of the children—*v. g.,* bringing them up in heresy—although sinful, are not considered as repugnant to the substance of marriage, because the education of children is not so essentially and immediately the end of matrimony. Still, if one of the parties made his consent depend on the condition that the other will assume the obligation of bringing up the children in heresy, as that obligation can not exist, the contract would be null because of an impossible condition.

of the nullity of the first consent. (Causa Osnabrucensis, Jan. 11, 1912; A. A. S., vol. iv, p. 186.)

That renewal may be made in secret if the fear was occult: Continuance of cohabitation will suffice for that. When the fear was public, the consent must be renewed in the form required for the celebration of marriage. Hence, when the fear is proved juridically, the question is not even raised whether the marriage was not revalidated by several years of cohabitation, wherever the solemn form of marriage is necessary for the validity. (A. A. S., vol. iv, p. 115.)

210. 7. The right of challenging a marriage on the ground of violence and fear belongs exclusively to the one who has suffered the injustice; and, moreover, he would forfeit his right, according to an instruction of June 20, 1883, if he had continued to cohabit, for a long time, without protesting when liberty and opportunity for doing so were not wanting.

Numerous examples of marriages challenged on the ground of fear are found in the Acta Apostolicæ Sedis. Cf. vol. ii, pp. 348, 886; vol. iii, pp. 244, 661; vol. iv, pp. 108, 646, etc.

III. MANIFESTATION OF THE CONSENT

Can. 1088. § 1. Ad matrimonium valide contrahendum necesse est ut contrahentes sint praesentes sive per se ipsi sive per procuratorem.

§ 2. Sponsi matrimonialem consensum exprimant verbis; nec aequipollentia signa adhibere ipsis licet, si loqui possint.

211. § 1. In order to contract marriage validly, it is necessary that the parties be present either personally or by proxy.

§ 2. The spouses shall express the matrimonial consent by words; nor are they permitted to use equivalent signs when they are able to speak.

1. Before the Council of Trent and also, according to the common opinion, confirmed by several decisions of Congregations, under the discipline of the decrees *Tametsi* and *Ne temere,* marriage could be contracted by letter, although it was recommended not to permit such mode of proceeding without grave reasons. The present law rejects it altogether and makes the presence of the parties either personally or by proxy a condition for the validity of the contract. In marriages by letter it was difficult, although not impossible, to observe the formalities demanded for the public celebration of marriage; hence doubts and disputes would arise afterward. They will be avoided by obliging the parties to appear in person or send a representative, which can always easily be done. (A. A. S., April 30, 1910, p. 300; De Smet, n. 70; Nouvelle Revue Théologique, Août, 1910, p. 460; Canoniste Contemporain, 1910, p. 366.)

212. 2. Innocent III, asked by a Bishop how the matrimonial consent should be expressed, answered that, for the Church, words were necessary. (IV, X, 1, c. 25.) From this some had concluded that there was a grave obligation to use words in contracting marriage; but others interpreted the Papal declaration as containing only a counsel. The Council of Trent did not decide the question, but the present canon clearly enunciates the obligation, explicitly stating that the equivalent signs, *æquipollentia signa,* which, according to the interpretation of Innocent's decree, given by Abbas Panormitanus, might serve as substitutes for words, may not be used now when the parties can speak. The pastor is to see that the law is observed. It is not binding under pain of nullity, but there can be little doubt that it is binding under pain of grave sin.

IV. MARRIAGE BY PROXY

Can. 1089. § 1. Firmis dioecesanis statutis desuper additis, ut matrimonium per procuratorem valide ineatur, requiritur mandatum speciale ad contrahendum cum certa persona, subscriptum a mandante et vel a parocho aut Ordinario loci in quo mandatum fit, vel a sacerdote ab alterutro delegato, vel a duobus saltem testibus.

§ 2. Si mandans scribere nesciat, id in ipso mandato adnotetur et alius testis addatur qui scripturam ipse quoque subsignet; secus mandatum irritum est.

§ 3. Si, antequam procurator nomine mandantis contraxerit, hic mandatum revocaverit aut in amentiam inciderit, invalidum est matrimonium, licet sive procurator sive alia pars contrahens haec ignoraverint.

§ 4. Ut matrimonium validum sit, procurator debet munere suo per se ipse fungi.

213. § 1. Besides what may be prescribed by diocesan statutes, in order that a marriage may be contracted validly by proxy, it is necessary to have a special mandate to contract marriage with a specified person, signed by the principal, and either by the parish priest or the Ordinary of the place in which the mandate is given or by a priest delegated by either of these, or by two witnesses.

§ 2. If the principal is not able to write, this fact is to be noted in the document, and an additional witness must sign it, else the mandate is null.

§ 3. If, before the proxy makes the contract in the name of the principal, the latter has revoked the commission, or has fallen into insanity, the marriage is invalid, even though both the proxy and the party with whom the contract was made would be unaware of the change.

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2.° If it concerns the future and is against the substance of marriage, it invalidates the marriage.

3.° If it concerns the future and is honest, it suspends the marriage.

4.° If it concerns the past or the present, the marriage is valid or not according as the condition is fulfilled or not.

This canon sums up with greater precision the legislation in vigor for several centuries, and is little more than the application of the natural law.

Conditions are divided here into several categories: That on which the matrimonial consent is conditioned or made to depend may be something past, present, or future. If it is something future, it may be necessary, that is, bound to come and already certain in itself; or impossible; or dishonest without being contrary to the substance of the marriage; or it may be contrary to it; or it may be something lawful.

223. 1.° If the consent is conditioned on something past or present, the marriage is valid or not according as the condition is verified or not. This rule is general and no distinction is made here between conditions which are impossible, unlawful, etc., as long as they are past or present.

224. 2.° When the consent is conditioned on something future, several distinctions have to be made; future conditions are divided into three categories:

(*a*) To the first category belong those conditions the object of which is something necessary, impossible, or dishonest, but not contrary to the substance of marriage.

Necessary conditions are here assimilated to the impossible ones, which was ordinarily not done by ancient canonists; and whether the parties know the real nature of the condition and its effect on the contract the result will be the same. (Reiffenstuel, n. 45; Schmalzgruber, n. 72ff.; Gasparri, 844, 853, 865ff.; Wernz, n. 300, note.)

The validity of the marriage contracted with one of those conditions will, objectively, depend on the reality of the condition and its realization; but the law, wishing to favor marriage and to restrict the cases of nullity, presumes that the condition did not exist or was not meant seriously, and that, therefore, the marriage is valid from the beginning. But this is a presumption *juris,* not one of those which admit of no proof to the contrary; it could not be, for the Church can not supply a consent which is wanting, and she does not wish to treat as valid a marriage which is null. If, then, it is certain, from the confession of the parties in the internal forum, or from circumstances in the external forum that the consent was truly made to depend on the condition, we have to see whether the condition is realized or not. If it is impossible, the contract is null; if necessary, the contract is valid at once; if it was immoral and is not yet fulfilled, the contract is at least suspended; there is no obligation, or even right, to fulfil the condition, nor to wait for its fulfilment, but if it happened to become fulfilled the contract would hold. (Gasparri, n. 853; Wernz, n. 300, not so positively.)

225. (*b*) When conditions concern a future and contingent event, possible and honest, the marriage remains in suspense until fulfilment.

(1) If one of the parties would revoke his consent the subsequent verification of the condition would be of no effect, for the two consents must exist at the moment the contract is actually completed; the same would be true if one would lose the use of reason. The presumption *juris et de jure* that consummation of the marriage implies withdrawal of the condition has probably not been abolished. (Wernz, n. 298; De Smet, n. 87.)

(2) If the condition is not fulfilled, nor withdrawn, there is no marriage.

(3) Once the condition is fulfilled, the contract is complete without notifying the parish priest or the witnesses. The formalities prescribed for marriage have to be observed only when it is celebrated. If, however, the condition was to obtain a dispensation from the Holy See, the parties are required to renew their consent when the dispensation is applied to them. In order that the validity of the marriage may not be questioned in the external forum, proofs of the fulfilment of the condition should be had if the existence of the condition was publicly known.

226. (*c*) A condition which is repugnant to the substance of the matrimonial contract renders it invalid by the law of nature itself, supposing that it is a real condition, because in that case there is no true matrimonial consent—one of its essential elements is excluded.

Conditions are really repugnant to the substance of marriage when they are inconsistent with the essential object of the marriage contract or destructive of one of its essential properties.

The object of the marriage contract is the mutual right and obligation of the spouses to generative relations; its essential properties are unity, which includes fidelity, indissolubility, and sacramental dignity. Hence:

227. (1) To contract marriage on condition that there will be no children or a limited number, if it means that the spouses do not give to each other the right to the acts apt for the generation of children, or that these rights are transferred only for a limited time, is to place a condition which is contrary to the essential object of the marriage contract and annuls it. If it meant that the rights are transferred but they will not be used, we would be in presence, not of a condition forming an integral part of the marriage contract, as in the previous supposition, but only of an accessory modification of it. The right to the marital relations is essential, the actual use of it is not.

228. (2) Marriage contracted under condition of practising onanism will be null or invalid in the same manner, according as this will be a true condition or only a modal clause, a refusal of the right to generative relations or merely an intention of not fulfilling obligations really assumed.

(3) The condition that the offspring will not be allowed to be born alive, that drugs of sterility will be taken, is also against the substance of marriage, the primary purpose of which is the procreation of children; and if it became part of the contract, that is, if the party or parties meant to reserve that right in the contract, the marriage would be null. Conditions against the moral good of the children—*v. g.,* bringing them up in heresy—although sinful, are not considered as repugnant to the substance of marriage, because the education of children is not so essentially and immediately the end of matrimony. Still, if one of the parties made his consent depend on the condition that the other will assume the obligation of bringing up the children in heresy, as that obligation can not exist, the contract would be null because of an impossible condition.

229. (4) Marriage contracted under the condition of not receiving the sacrament, not being bound absolutely and forever, retaining a right to relations with other parties, is invalid whenever the condition is part of the contract, not simply an interpretative intention, an error in the mind, an accessory clause. It is a part of the contract when it implies reserving a right, like that of dissolving the marriage in case of adultery. Some canonists distinguish between the conditions which are against the good of fidelity and the offspring, and those which are against the good of the sacrament or the indissolubility of the bond. The former are not contrary to the substance of matrimony and do not nullify it unless they are set down as a pact, *in pactum deductæ;* the latter render the marriage null even if they are not introduced into the pact, because they are directly, immediately, of their inherent force contrary to the substance of matrimony. (Wernz, n. 302, note 44.)

230. In practice, however, It will be difficult, if not impossible, to prove that a party by a positive and not an interpretative intention gave his consent to only a dissoluble union unless it be proved that the intention was introduced into the pact or made a strict condition. In those cases there exist generally in the mind of the contracting party two contrary intentions—the general intention of contracting a real marriage, which means an indissoluble one, and a particular intention of not binding one's self absolutely and forever. The marriage will be valid or null according as it will be the general or particular intention that will prevail; and, according to Benedict XIV, the general intention prevails unless the particular one is expressly laid down, made a real condition. (De Syn., lib. xii, c. 22, n. 7.) When it has ceased to be a theoretical error to become a suspensive condition may be judged from circumstances, from the declaration of the parties, the motives that prompted them, and also from the ritual form used in some sects and the interpretation commonly put upon it. (Inst. S. C. Inq., April 6, 1843; Dec. 9, 1874, to the Bishop of St. Albert, Canada; 1877, to the Bishop of Nesqually.)

The existence of a real condition contrary to the substance of marriage is often very difficult to prove. De Lugo states that if both parties placed the condition and both affirm it, nothing more will be required to declare the marriage null *in foro externo,* unless there be presumption of collusion. (Gasparri, n. 860-864; Oregonopolitana, A. A. S., Oct., 1914, p. 516 seq.; Neo-Eboracensis, A. A. S. June, 1915, p. 292 seq.)

VIII. CONSENT IN INVALID MARRIAGE

Can. 1093. Etsi matrimonium invalide ratione impedimenti initum fuerit, consensus praestitus praesumitur perseverare, donec de ejus revocatione constiterit.

231. Although marriage be invalid because of an impediment, the consent once given is presumed to persevere unless its revocation be proved.

It is supposed that the consent was valid in itself but remained without effect because of an impediment. Unless it is revoked, and revocation is a fact not to be presumed but proved, it will continue and be able to produce its effect when the obstacle is removed, as in cases of dispensation *in radice.*

CHAPTER VI

THE FORM OF MARRIAGE

A. Former Discipline

232. 1. "From the beginning of Christian society the marriage of its members was looked upon as a public religious act, subject to ecclesiastical control." (Tertullian, De Monog., c. 11; De Pudi., c. 4.) The obligation of making known to the Bishop all proposed marriages dates as far back as the beginning of the second century. (St. Ignatius ad Polyc., c. 5.) It was not doubted that marriage, although a sacrament, is also a contract, and that all the essential elements of a contract are found in the consent of the parties; but even for consensual contracts a certain form may be prescribed by the positive law. Nor was it forgotten that to marry is a right which every man receives from nature. On the contrary, the ecclesiastical legislation always aimed at facilitating the exercise of that right as much as possible. But it was remembered, on the other hand, that marriage is a social function also. Its primary end is not the satisfaction of individual needs or desires, but the propagation of the species and the preservation of society. The good of society and of the family, as well as that of the individual, depends on marriage; they are interested, therefore, in its proper regulations, and should have the right to exercise some control over it. Hence the ceremonies and rites of varying solemnity which, by custom or law, accompanied, among all peoples, the celebration of marriage. The

Christian Church, for whom marriage is also a sacrament, could not remain indifferent to what concerns it, nor approve its celebration without some intervention on her part.

The denunciations of Tertullian against clandestine marriages would almost lead one to conclude that in his time they were invalid. There is no other proof of this, but it can not be doubted that they were strictly forbidden. That prohibition was frequently renewed by provincial Councils, particularly after the eighth century. As an additional measure the Fourth Lateran Council, in 1215, commanded that all prospective marriages be publicly announced in church. But that law, too, was disobeyed, and marriages continued to be contracted secretly, with the result that legitimately married parties could separate and enter another contract, which, although null, was to be held as valid by the Church; others lived in concubinage under the cover of a supposed occult marriage.

233. 2. To remedy those evils some Councils decided to prescribe a certain form of marriage, demanding among other things that it be celebrated in presence of the pastor and of several witnesses. But that legislation was local in character and, moreover, it could be disregarded also and remain without effect unless some sanction were added to it. And so when a General Council met at Trent for the reformation of abuses in the Church, the Fathers were petitioned and urged, especially by the representatives of the king of France, to devise some means by which the great evil of clandestine marriages could be rooted out. All merely prohibitive regulations had failed. The only resource left, apparently, was to declare all clandestine marriages invalid. The measure was a radical one and met, at first, with strong opposition. Some considered it as a dangerous novelty, calculated to multiply illegitimate unions by curtailing the liberty of marriage. Others objected on doctrinal grounds, as this seemed to be changing the substance of the sacrament. The great majority of the Fathers, however, were in favor of the reform and the decree *Tametsi* was published. The somewhat involved wording of it seems to reveal in its framers some hesitation as to the real nature of the impediment they were introducing. But whatever the theoretical foundation of the decision, it was clearly and explicitly enacted that in future marriages would be null unless contracted in presence of the pastor and of at least two witnesses.

It was not to be expected that the Tridentine decree would remove all abuses and meet everywhere with the same success. One great result it has accomplished—the almost total abolition of strictly occult marriages from Christian society. The State has imitated the Church, and marriage is rarely contracted without the intervention, under one form or another, of the social authority, civil or religious.

234. 3. But the decree *Tametsi* remained unpublished in many places; in others its publication was doubtful; hence, lack of uniformity, uncertainties, and the inconveniences of the ancient discipline. Where it was published its application gave rise to numerous difficulties. It had been interpreted as demanding for validity that the marriage be celebrated before the parish priest of the parties. In modern times, among the moving population, particularly of large cities, it had become often difficult to find out who was the parish priest; numerous errors were made, in good faith. This was one of the main reasons that prompted several Bishops to ask for a modification of the Tridentine legislation.

Acceding to their desires, Pope Pius X had the matter studied carefully and on August 2, 1907, was published the decree *Ne temere,* which, without introducing any essential change in the existing discipline, regulated the form of marriage in a manner better adapted to present conditions. The new decree went into effect at Easter, 1908. Its wisdom and beneficent efficacy were so well established by an experience of eight or nine years that it was embodied in the new Code with hardly any modification.

B. Present Legislation

1.° GENERAL PRINCIPLE

Can. 1094. Ea tantum matrimonia valida sunt quae contrahuntur coram parocho, vel loci Ordinario, vel sacerdote ab alterutro delegato et duobus saltem testibus, secundum tamen regulas expressas in canonibus qui sequuntur, et salvis exceptionibus de quibus in can. 1098, 1099.

235. Only those marriages are valid which are contracted before the parish priest or the local Ordinary or a priest delegated by either of them and at least two witnesses, in accordance with the rules laid down in the canons that follow and excepting the cases mentioned in can. 1098, 1099.

Like the decree *Tametsi,* this canon demands for the validity of marriage the presence of the parish priest as the official representative of the Church, and of two witnesses; but formerly personal, at least in part, the law has now become exclusively territorial. It is not the pastor or Ordinary of the parties whose presence is necessary for the validity, but the pastor or Ordinary of the place in which the marriage is celebrated. The intervention of the pastor in the celebration of marriage is assimilated to the exercise of external jurisdiction, which is territorial, as distinct from the jurisdiction of the internal forum, which has become more and more personal.

2.° CONDITIONS FOR THE VALIDITY

Can. 1095. § 1. Parochus et loci Ordinarius valide matrimonio assistunt:

1.° A die tantummodo adeptae canonicae possessionis beneficii ad normam can. 334, § 3, 1444, § 1, vel initi officii, nisi per sententiam fuerint excommunicati vel interdicti vel suspensi ab officio aut tales declarati;

2.° Intra fines dumtaxat sui territorii; in quo matrimoniis nedum suorum subditorum, sed etiam non subditorum valide assistunt;

3.° Dummodo neque vi neque metu gravi constricti requirant excipiantque contrahentium consensum.

§ 2. Parochus et loci Ordinarius qui matrimonio possunt valide assistere, possunt quoque alii sacer-

doti licentiam dare ut intra fines sui territorii matrimonio valide assistat.

236. § 1. The pastor and Ordinary of the place validly assist at a marriage:

1.° Only from the day on which they have taken canonical possession of their benefice, in accordance with can. 334, § 3; 1444, § 1; or entered upon their office, unless they have been, by a particular decree, excommunicated or suspended from office, or declared to be such;

2.° Only within the limits of their territory; but in that territory they assist validly at marriages not only of their subjects but also of others;

3.° Provided that without being compelled to do so, by violence or grave fear, they ask and receive the consent of the parties.

§ 2. The pastor and Ordinary of the place who may validly assist at marriage, may also give permission to another priest to assist validly within their territory.

237. 1. Under the name of "Ordinary" are included Bishops, Vicars-Apostolic, Vicars-General, Prefects-Apostolic, Vicars-Capitular and Administrators during the vacancy of the See. (Holy Office, Feb. 20, 1888.) "By 'pastor' is to be understood not only the priest who legitimately presides over a parish which is canonically erected, but also, in localities where parishes are not canonically erected, the priest to whom the care of souls has been legitimately entrusted in a determined district, and who is assimilated to a pastor; and also in missions where the territory has not yet been perfectly divided, every priest generally deputed for the care of souls, in any station by the superior of the mission"; (*Ne temere,* n. ii.) and, we may add, the priest, who, without having the title of "pastor," has full charge of a parish during a prolonged absence or sickness of the regular pastor. Curates need a delegation from the pastor or Ordinary to assist validly at marriages. It may be given them for particular cases or for all marriages in the parish.

2. The Ordinary and pastor may validly assist at marriages, not from the day of their election or appointment, but, for the Bishop, from the day he takes formal possession of his diocese, personally or by proxy; and for the pastor, Vicar-General, Vicar-Capitular, etc., from the day of their installation; or, if there is no formal installation, from the day they begin the exercise of their office.

238. 3. They lose their authority when their possession of the office to which it is attached comes to an end, by translation, removal, resignation, etc., and also by those causes which suspend the exercise of external jurisdiction; viz., excommunication or suspension from office pronounced or denounced by special sentence. Not all censures produce that effect, but only those which are mentioned here and have all the required conditions, for we are *in materiâ odiosâ.* Irregularities are not mentioned here; the suspension is the suspension from office, not from benefice or from sacred functions. Nor would it be sufficient to have incurred a secret or even public excommunication or suspension; it is necessary that the censure should have been inflicted, or that it should be denounced by sentence of the judge.

239. 4. Ordinaries and pastors can validly assist at all marriages contracted within their territory, whoever the contracting parties may be.

This applies to pastors in ordinary conditions, who are the only ones the law can have here in view. But it may be supposed that nothing is changed in regard to those whose situation is exceptional and jurisdiction personal, by the very nature of the case.

In explaining the decree *Ne temere* the Congregation of the Holy Office, February 1, 1908, distinguished four special classes of parish priests:

(*a*) Those who have no territory at all but who, like military chaplains, exercise their jurisdiction directly over persons, following them wherever they go. It was declared that nothing had been changed in regard to military chaplains; they may validly assist at the marriage of their subjects in any place, but not at the marriage of any other person, even in their military chapel or church. Their subjects may, however, validly contract marriage before any pastor, in his territory, unless the chaplains have been granted exclusive jurisdiction, as has been the case in Germany for a number of years. (Nouvelle Revue Théologique, Mai, 1908, p. 290.)

240. (*b*) Parish priests who have no territory exclusively their own, but one in common with another or other pastors. They can validly assist at all marriages within that territory.

(*c*) Parish priests who have charge of certain persons or families within a territory assigned to other pastors. This is ordinarily the case with pastors of national churches in American cities. They can assist validly at the marriage of their subjects in the territory, but not at the marriage of strangers. Their subjects may validly contract marriage before any other pastor.

(*d*) Priests in charge of institutions, like colleges, hospitals, etc., which are exempt from parochial jurisdiction. If it is certain that they have received full parochial powers, which is not to be presumed without proof, they may assist at the marriage of persons who are in their care, but only in the place in which they exercise their office. (A. A. S., Feb., 1908, p. 92-111; Canoniste Contemporain, Mars, 1908, p. 133; N. R. T., Mai, 1908, p. 289.)

241. 5. Mode of assistance. Under the law of Trent it was enough for the priest to be present and understand that the parties exchanged consents, whether he was a willing witness or not, whether he was present by mere accident or preconcerted arrangement. Now, passive, unwilling presence does not suffice; it must be active, free.

(*a*) The parish priest must not be constrained by fear or violence. Such fear, to render his assistance invalid, must be grave. Must it be unjust also? It would seem so, but the text does not state it explicitly, from which some have concluded that it is not necessary. (Besson, N. R. T., Fev., 1908, p. 34; contra, De Becker, Legislatio nova, p. 42.) Fraud and deceit are not mentioned as affecting the validity.

(*b*) The pastor must ask and receive the consent. Receiving it would not suffice; a positive act is required of him, active assistance even at mixed marriages. What is said here of the priest as a qualified witness applies only to him, not to the other witnesses; nothing is changed in regard to them; passive presence continues to suffice and no special qualifications are required in them.

3.° AUTHORIZATION TO ASSIST AT MARRIAGES

Can. 1096. § 1. Licentia assistendi matrimonio concessa ad normam can. 1095, § 2, dari expresse debet sacerdoti determinato ad matrimonium determinatum, exclusis quibuslibet delegationibus generalibus, nisi agatur de vicariis cooperatoribus pro paroecia cui addicti sunt; secus irrita est.

§ 2. Parochus vel loci Ordinarius licentiam ne concedat, nisi expletis omnibus quae jus constituit pro libertate status comprobanda.

242. § 1. The permission to assist at a marriage granted in accordance with the prescriptions of can. 1095, § 2, must be given expressly, to a priest specified, for a determined marriage, to the exclusion of general delegations, except in the case of assistant pastors for the parishes to which they are attached; otherwise the permission is invalid.

§ 2. The pastor or Ordinary of the place must grant that permission only after he has complied with all that the law requires to ascertain the freedom of the parties.

1. The pastor or Ordinary who has authority to assist at marriages can communicate it to others. That communication, which is not called delegation, but permission, because there is no power of jurisdiction exercised here, must be made expressly and really. Presumed or tacit permission, which was considered as probably sufficient before, would now certainly be null.

2. The permission must be given to a priest, not to a simple cleric, to a priest specified and determined; not that he should necessarily be mentioned by name, but he should be so designated by his office or otherwise, that there be no doubt as to who is meant.

243. 3. The permission must be given for particular definite cases. Assistant pastors may be authorized to assist at all the marriages in the parish, but outside of that case general permissions are null. An Ordinary can not give authority to a priest to assist validly at marriages in the whole diocese; nor could a pastor give it for all marriages in his parish. This is a change in the existing legislation.

4. Even when the pastor or Ordinary of the place is not to assist himself at the marriage of one of his subjects, it remains his duty to make the prescribed investigations before the marriage, publish the banns, etc.

4.° CONDITIONS FOR THE LAWFUL ASSISTANCE AT MARRIAGE

Can. 1097 § 1. Parochus autem vel loci Ordinarius matrimonio licite assistunt:

1.° Constito sibi legitime de libero statu contrahentium ad normam juris;

2.° Constito insuper de domicilio vel quasi-domicilio vel menstrua commoratione aut, si de vago agatur, actuali commoratione alterutrius contrahentis in loco matrimonii;

3.° Habita, si conditiones deficiant de quibus n. 2, licentia parochi vel Ordinarii domicilii vel quasi-domicilii aut menstruae commorationis alterutrius contrahentis, nisi vel de vagis actu itinerantibus res sit, qui nullibi commorationis sedem habent, vel gravis necessitas intercedat quae a licentia petenda excuset.

§ 2. In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi justa causa excuset; matrimonia autem catholicorum mixti ritus, nisi aliud particulari jure cautum sit, in ritu viri et coram ejusdem parocho sunt celebranda.

§ 3. Parochus qui sine licentia jure requisita matrimonio assistit, emolumenta stolae non facit sua, eaque proprio contrahentium parocho remittat.

244. § 1. The pastor or Ordinary of the place lawfully assist at a marriage:

1.° After duly ascertaining the freedom of the parties, in accordance with the prescriptions of law;

2.° After ascertaining, moreover, that one of the contracting parties has a domicile or quasi-domicile or monthly residence, or, if it is question of a vagus, actual residence at present in the place of the marriage;

3.° Having obtained, if the conditions mentioned in n. 2 are not fulfilled, permission from the pastor or Ordinary of the domicile, quasi-domicile, or monthly residence of one of the contracting parties, unless it be question of those vagi who are actually traveling and have no residence in any place, or unless a grave necessity excuses from obtaining the permission.

§ 2. In every case the rule shall be that the marriage is celebrated before the pastor of the bride, unless a just cause excuses from it; marriages between Catholics of different rites are to be celebrated in the rite of the bridegroom unless ordained otherwise by particular law.

§ 3. A pastor who assists at a marriage without the required permission acquires no right to the stole fee and shall return it to the pastor of the contracting parties.

245. 1. The first condition for being permitted to proceed to the celebration of a marriage is to have complied with all the prescriptions of the law for ascertaining the freedom of the parties to marry.

2. Regularly people should contract marriage in the place of their domicile, quasi-domicile, monthly residence, or actual residence if they are vagi; and they should be married by their pastor or Ordinary, or the pastor of one of them. The new law does not intend to take away from parish priests any of their former rights in this matter, only it does not make the presence of the parish priest of the parties, at the marriage, a condition for its validity. Consequently,

although a parish priest can assist validly at any marriage celebration within his own territory, he has no right to do so unless at least one of the parties has a domicile, quasi-domicile, monthly residence, or actual residence if he be vagus, in the parish.

246. 3. To assist at the marriage of parties neither of whom is his subject in any sense, a pastor or Ordinary ought to obtain permission from the one before whom the marriage should regularly be celebrated. To this rule there are two exceptions: (*a*) The vagi who have not even a place of actual residence because they are actually moving from one place to another, belong to no pastor, and, therefore, may go to any one whom they choose. (*b*) A grave necessity would dispense from obtaining that permission. The reason demanded to excuse from the law is a grave one, which supposes that the obligation imposed by the law is grave also.

4. When the parties belong to two distinct parishes, either pastor would be competent to assist at the marriage, but the rule is that the pastor of the bride should perform the ceremony, unless there be a just cause, not necessarily a grave one. If the bride was a non-Catholic this would, no doubt, be a sufficient reason to give the preference to the bridegroom's pastor, unless diocesan regulations ordain otherwise. It is explicitly declared here that when the parties belong to different rites, it is in the bridegroom's rite that the marriage is to be celebrated and in presence of his pastor, but it is also recognized that a different rule may be adopted by particular legislation.

247. 5. The Council of Trent punished with suspension pastors who officiated at marriages without proper authority. The present law only declares that they are not entitled to the stole fees.

Although only pastors are mentioned here explicitly, this, no doubt, applies equally to all priests who violate the law in that manner.

The obligation to restore the fees is one of justice binding before any sentence of the judge, since it is declared that no right has been acquired to the emolument.

This concerns the pastors who assist at a marriage without the proper permission, that is, pastors assisting at the marriage of parties who are not their subjects in any sense, without obtaining the permission which is required in those cases. It would not seem to apply in the case of the pastor of the bridegroom performing the ceremony instead of that of the bride.

The fee has to be handed to the proper pastor of the contracting parties. If they belong to different parishes, the fee would naturally go to the bride's pastor, although this is not stipulated in the law, since he is the one who regularly should have officiated. If the bride has a domicile, quasi-domicile, or monthly residence, the pastor of the place of domicile would seem to have first claim.

248. Note. The questions of domicile or quasi-domicile have not, at present, in this matter the importance they had formerly, as the validity of a marriage does not depend on them; still, the licitness does, and it is the duty of pastor or Ordinary before proceeding to a marriage to find out whether the parties are his subjects, at least one of them.

1. According to can. 94, book ii, every person's pastor or Ordinary is the pastor or Ordinary of the place in which that person has his domicile or quasi-domicile. The pastor of the vagi, or of those who have neither domicile nor quasi-domicile, is the pastor of the place in which they actually reside. They, too, therefore, have their proper pastor and Ordinary.

The pastor of those who have no domicile or quasi-domicile in any particular parish, but only in the diocese, is the pastor of that parish in which they actually reside.

249. Can. 1097, 2, mentions also monthly residence, together with domicile and quasi-domicile, as sufficient for marriage.

The only persons, then, who belong to no pastor and may choose any one they please for marriage, are those vagi who have not even what might be called a residence, *sedes commorationis,* in any place. (Holy Office, March 24, 1867.)

2. According to can. 92, domicile may be acquired in a parish or quasi-parish, or at least in the diocese, vicariate apostolic, prefecture apostolic, by actual residence there together with the intention of remaining permanently, if nothing happens to call elsewhere; or also by the mere fact of actual residence for ten complete years. Quasi-domicile may be acquired by residence in the parish, diocese, etc., together with the intention of remaining for the greater part of the year; or also by the mere fact

of actual residence in the place for the greater part of the year.

Thus there are two ways, under the present law, of acquiring a domicile or quasi-domicile; and both may be acquired in a diocese without being acquired in any particular parish; for example, at present a man who would reside for ten years in different parishes in the same diocese, would have a diocesan, although not a parochial, domicile.

250. 3. Domicile or quasi-domicile is lost by leaving the place without intention of returning, except in the case of minors who retain the domicile of those under whose authority they are, *i.e.,* their father or, in his default, their mother or guardian; they may, however, once they have completed their seventh year, acquire a quasi-domicile of their own.

5.° EXCEPTIONS: IN CASES OF DANGER OF DEATH OR OF URGENT NECESSITY

Can. 1098. Si haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius vel sacerdos delegatus qui matrimonio assistant ad normam canonum 1095, 1096:

1.° In mortis periculo validum et licitum est matrimonium contractum coram solis testibus; et etiam extra mortis periculum, dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam;

2.° In utroque casu, si praesto sit alius sacerdos qui adesse possit, vocari et, una cum testibus, matrimonio assistere debet, salva conjugii validitate coram solis testibus.

251. If it is impossible without grave inconvenience to send for or go to a pastor or Ordinary or a priest delegated by either of these to assist at a marriage in accordance with the prescriptions of canons 1095, 1096:

1.° In case of danger of death, marriage will be contracted validly and licitly in presence of the witnesses only; and it will be the same outside of the danger of death, provided it be foreseen that this condition of things is to last for a month.

252. 2.° In both cases if a priest could be present he should assist at the marriage together with the witnesses, but the marriage would be valid in presence of the witnesses alone.

The presence of the pastor may be dispensed with in the celebration of marriage on two conditions taken together: First, that it is impossible to have him; secondly, that there is either danger of death or a serious probability that the same state of things will last for a month.

253. 1. The impossibility is a moral one, existing whenever the law can not be complied with, short of grave inconvenience. (S. C. de Sac., March 12, 1910.) The nature of the inconvenience is not defined; it does not matter where it comes from, nor whether it affects the parties or the priest. According to the answer of the Congregation of the Sacraments, March 12, 1910, ad 3^{um}, if the parties had betaken themselves to a country where they can have no priest, for the purpose of evading the law, they would still be dispensed.

It must be impossible to have, or to go to, a competent priest. If the priest can not come, the parties should go to him; if the parties can not go to their pastor or Ordinary or a priest delegated by either of these, they should go, when possible, to another pastor or Ordinary who would have authority in the place in which the marriage would be celebrated. Thus, they might go to a neighboring pastor to be married in his parish. They would not be obliged to go to one who has no authority in the place.

A delegation should be obtained, if possible, but one is not bound to use for that the telegraph or telephone.

254. Will a particular necessity suffice?

Some canonists had interpreted in that sense Art. viii of the decree *Ne temere* in spite of the words, "if in a district," which seemed to refer to an impossibility affecting a whole region. Their view appeared to be favored by the answer of the Congregation quoted above, March 12, 1910, ad 1^{um}, in which the word *regio,* which caused the difficulty, was omitted. It seemed more explicitly confirmed by two other decisions which, although not published in the A. A. S., are of undoubted authenticity (Propaganda, March 24, 1909; Cong. Sac., Nov. 26, 1909; apud Bucceroni, Theolo. Mor., 4th edit.; Eccles. Rev., Ap., 1915, p. 477). The first directs parish priests to let parties who can not comply with the prescriptions of the civil law contract marriage before two witnesses. The second directs the Ordinary to allow parties to contract marriage without a priest in presence of two witnesses only, when the civil law renders the presence of the priest impossible. A. Lehmkuhl concluded from those decrees that under the *Ne temere* marriage could be contracted with only the two witnesses whenever it was not possible to secure the presence of a priest, even though there would be priests in the place who, under ordinary circumstances, could assist at the marriage.

A decree of the Congregation on the Discipline of the Sacraments of January 31, 1916, does not, however, fully support that conclusion.

It was asked what should be done when, in those countries in which the civil law strictly forbids the celebration of the religious before the civil marriage, the civil marriage could not be celebrated and yet the good of souls would demand that the parties be married.

The answer was, to refer those cases to Rome, except in danger of death, when any priest can dispense from the impediment of clandestinity and permit the celebration of a marriage in presence of two witnesses. (A. A. S., Feb., 1916, p. 36; cf. De Smet, n. 69; Wernz, iv, pars. i, p. 300; N. R. T., 1908, Mar. 152, Nov. 662-667, Dec. 733.)

255. 2. The second condition is danger of death for at least one of the parties or danger of having to delay the marriage for a month.

(a) The danger of death has not to be very grave, as in the decree of 1888, nor imminent, as in the decree *Ne temere,* but simply grave, that is, seriously probable; and it does not matter from what causes it

arises. Together with the danger of death, the decree *Ne temere* demanded that marriage should be necessary for the relief of conscience or the legitimation of the offspring. Henceforth this will not be required.

256. *(b)* Even when there is no danger of death, parties may dispense with the presence of the competent priest if they would have to wait for a month. Under the decree *Ne temere* it was required that they should have already waited for a month. Certainty is not necessary; it suffices that there be a serious probability of being unable to have the pastor within a month. It is added that if the presence of another priest who would have no special authority can be secured, it ought to be done, but this is not necessary for the validity. Under the *Ne temere* legislation, the presence of a priest was always required in the case of danger of death and it was not demanded at all in the case of necessity.

6.° THOSE WHO ARE AFFECTED BY THE LAW

Can. 1099. § 1. Ad statutam superius formam servandam tenentur:

1.° Omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi, licet sive hi sive illi ab eadem postea defecerint, quoties inter se matrimonium ineunt;

2.° Iidem, de quibus supra, si cum acatholicis sive baptizatis sive non baptizatis etiam post obtentam dispensationem ab impedimento mixtae religionis vel disparitatis cultus matrimonium contrahant;

3.° Orientales, si cum latinis contrahant hac forma adstrictis.

§ 2. Firmo autem praescripto § 1, n. 1, acatholici sive baptizati sive non baptizati, si inter se contrahant, nullibi tenentur ad catholicam matrimonii formam servandam; item ab acatholicis nati, etsi in Ecclesia catholica baptizati, qui ab infantili aetate in haeresi vel schismate aut infidelitate vel sine ulla religione adoleverunt, quoties cum parte acatholica contraxerint.

257. § 1. The above laws are binding:

1.° On all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism, even if either the latter or the former have fallen away afterwards, whenever they contract marriage among themselves;

2.° Those laws are binding also on the abovementioned persons, if they contract marriage with non-Catholics, baptized or unbaptized, even when a dispensation has been obtained from the impediment of mixed religion or disparity of worship;

3.° Orientals are bound to the prescribed form when they contract with Latins.

§ 2. Non-Catholics, whether baptized or unbaptized, who contract among themselves are nowhere bound to observe the Catholic form of marriage; nor one who, born of non-Catholic parents, was baptized in the Catholic Church, but grew up, from infancy, in heresy, or schism, or infidelity, or without any religion, if he contracts marriage with a non-Catholic.

258. 1. *Catholic marriages.* Catholics of the Latin rite, when they marry among themselves, are bound by this law all over the world. By Catholics are meant all who at any time were acknowledged members of the Catholic Church by Baptism or by conversion: *(a)* persons baptized and educated in the Catholic religion and never separated from it; *(b)* persons baptized as Catholics who never practised the Catholic religion (the case of one born of infidel or non-Catholic parents, baptized as a Catholic and brought up from infancy in heresy or infidelity had to be referred to the Holy Office according to a decree of March 31, 1916. The present law considers him as a non-Catholic); *(c)* persons baptized as Catholics, but who afterward have fallen away into heresy; *(d)* non-Catholics, baptized in heresy or schism, converted to the Church and fallen away again.

We should consider as baptized in the Catholic Church: *(a)* infants who, with the consent of their parents, are brought to be baptized by a Catholic clergyman, even if the parents are non-Catholics; *(b)* infants born of Catholic parents who are baptized by a lay person in case of necessity; *(c)* adults who of their own accord have presented themselves to be baptized by a Catholic minister. "Infants baptized as non-Catholics, but whom their convert-parents cause to be brought up as Catholics, may be considered as converts."

259. 2. *Mixed marriages.* Catholics are bound by this law even when they contract marriage with non-Catholics. Because of the unity of the marriage contract, the law must be binding on both parties or neither. Under the Tridentine discipline, if one of the parties was exempt he communicated the exemption to the other; under the new law it is the contrary principle that prevails—the party who is bound communicates his obligation to the other. It does not seem fitting that a Catholic should be freed from an obligation because he marries a non-Catholic. On the other hand, there is nothing unreasonable in asking a non-Catholic to conform to the laws of the Church if he wishes to marry one of her members.

An exception to this rule had been made by the Holy See in favor of Germany, where the provisions of a previous constitution *(Provida,* Jan. 18, 1906) were maintained after the decree *Ne temere;* and for Hungary by a decree of the Congregation of the Council, Feb. 27, 1909. In those countries mixed marriages remained exempt from this law. Extension of the concession to Russia and Poland was refused by the Congregation of the Council, July 8, 1908. The exception was to be restricted to mixed marriages, *i.e.,* marriages between Catholics and baptized non-Catholics; and it was officially interpreted as applying only to marriages contracted in Germany between parties who were both natives of Germany, and to marriages contracted in Hungary between parties who were both natives of Hungary. (De Smet, n. 79.) The present law mentions no exception.

260. 3. *Non-Catholic marriages.* Persons who were never members of the Catholic Church by baptism or by conversion are nowhere bound to observe the formalities prescribed for the valid celebration of marriage when they marry among themselves.

7.° RITES TO BE OBSERVED

A. In Catholic Marriages

Can. 1100. Extra casum necessitatis, in matrimonii celebratione serventur ritus in libris ritualibus ab Ecclesia probatis praescripti aut laudabilibus consuetudinibus recepti.

261. Outside of the case of necessity, the rules prescribed in the rituals approved by the Church, or those which have been introduced by a laudable custom, shall be observed in the celebration of marriage.

Can. 1101. § 1. Parochus curet ut sponsi benedictionem sollemnem accipiant, quae dari eis potest etiam postquam diu vixerint in matrimonio, sed solum in Missa, servata speciali rubrica et excepto tempore feriato.

§ 2. Sollemnem benedictionem ille tantum sacerdos per se ipse vel per alium dare potest, qui valide et licite matrimonio potest assistere.

262. § 1. The pastor shall take care that the spouses receive the solemn blessing, which may be given them, even after a long time of married life, but only during Mass; observing the prescriptions of the rubric on that point and outside of the forbidden time.

§ 2. The solemn blessing may be given only by that priest who can assist at the marriage validly and lawfully; he may give it himself or through another.

263. 1. It is the wish of the Church that all marriages should receive the nuptial blessing when it is permitted; it should be given to all who did not receive it when they were married, even if they ask for it a long time after, and they should be exhorted to ask for it as soon as possible. (Holy Office, Aug. 31, 1881.)

The blessing should not be given outside of Mass, of which it forms a part. It consists of the prayers: *Propitiare Domine . . . Deus qui potestate . . .* which the priest recites over the couple, between the *Pater* and the *Libera nos;* and of the prayer *Deus Abraham,* which is said before the *Placeat.*

When the rubrics do not allow the Nuptial Mass, the nuptial blessing may be inserted in the Mass of the day, except during the forbidden time, which excludes the solemnization of marriage.

264. 2. The priest who has authority to perform the marriage ceremony is the only one who may give the solemn blessing. He may do so himself or authorize any other priest to do it in his place.

B. In Mixed Marriages

Can. 1102. § 1. In matrimoniis inter partem catholicam et partem acatholicam interrogationes de consensu fieri debent secundum praescriptum can. 1095, § 1, n. 3.

§ 2. Sed omnes sacri ritus prohibentur; quod si ex hac prohibitione graviora mala praevideantur, Ordinarius potest aliquam ex consuetis ecclesias-

ticis caeremoniis, exclusa semper Missae celebratione, permittere.

265. § 1. In marriages contracted between a Catholic and a non-Catholic the consent must be asked as prescribed by can. 1095, § 1, n. 3.

§ 2. But all sacred rites are forbidden; if, however, from this prohibition greater evils were likely to result, the Ordinary might permit some of the usual ecclesiastical ceremonies, always to the exclusion of the Mass.

1. Before the decree *Ne temere,* the assistance of the priest at mixed marriages was, as a rule, purely passive. That decree having demanded an active assistance for the validity of the contract, the Congregation of the Council declared, July 27, 1908, ad 3^{um}, that this applied also to mixed marriages, and the present canon ordains likewise that in mixed marriages the officiating priest will ask and receive the consent as in other marriages. The Holy See may make an exception to that rule. A decree of the Holy Office, June 21, 1912, declared that when by special permission of the Sovereign Pontiff a priest assists at a mixed marriage, although the customary promises have not been made, the assistance must remain purely passive. But this held exclusively in those countries for which the above concession had been made; *viz.,* parts of Hungary, Austria, and Germany. (A. A. S., vol. iv, p. 443; Eccl. Rev., t. xlvii, p. 477; N. R. T., Jan., 1913, p. 17; H. O., Aug. 2, 1916; A. A. S., Sept. 1, 1916.)

266. 2. Regularly, mixed marriages have to be celebrated without any religious ceremony, outside of the church; the priest does not wear any religious vestments or insignia of his office. However, several decrees or instructions of Congregations had authorized Bishops to depart from that severity when deemed necessary to avoid greater evils. (Inst. Antonelliana, Nov. 15, 1858.)

The publishing of the banns, a short address or instruction, the celebration of the marriage in church before the priest vested in surplice, were permitted in various places. But it was always understood that no Mass should be celebrated in connection with the marriage ceremony. The new law leaves it to the Bishop to grant the same permissions when the greater good of souls will demand it.

8.° REGISTRATION

Can. 1103. § 1. Celebrato matrimonio, parochus vel qui ejus vices gerit, quamprimum describat in libro matrimoniorum nomina conjugum ac testium, locum et diem celebrati matrimonii atque alia secundum modum in libris ritualibus et a proprio Ordinario praescriptum; idque licet alius sacerdos vel a se vel ab Ordinario delegatus matrimonio adstiterit.

§ 2. Praeterea, ad normam can. 470, § 2, parochus in libro quoque baptizatorum adnotet conjugem tali die in sua paroecia matrimonium contraxisse. Quod si conjux alibi baptizatus fuerit, matrimonii parochus notitiam initi contractus ad parochum baptismi sive per se sive per Curiam episcopalem transmittat, ut matrimonium in baptizatorum librum referatur.

§ 3. Quoties matrimonium ad normam can. 1098

contrahitur, sacerdos, si eidem adstiterit, secus testes tenentur in solidum cum contrahentibus curare ut initum conjugium in praescriptis libris quamprimum adnotetur.

267. § 1. After the celebration of a marriage, the parish priest, or he who takes his place, is to register as soon as possible in the book of marriages the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the Ordinary. This obligation holds likewise when another priest, delegated either by the parish priest himself or by the Ordinary, has assisted at the marriage.

§ 2. Moreover, the parish priest is to note in the book of baptisms the fact that the married person contracted marriage on such a day in his parish. If the married person was baptized elsewhere, the parish priest who has assisted at the marriage is to send notice of the marriage, either directly or through the episcopal curia, to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the book of baptisms.

§ 3. Whenever a marriage is contracted in the manner described under can. 1098, the priest, if one was present, otherwise the witnesses, are bound conjointly with the contracting parties themselves to provide that the marriage be entered as soon as possible in the prescribed registers.

1. The Council of Trent (Sess. xxiv, c. 1) commands pastors to have a book in which to enter marriages, with the names of the parties and witnesses, the day and the place of the contract. The Roman ritual contains the same prescriptions (Tit. vii, de Sac. Mat., c. 2), giving forms to be used and adding that the parish priest ought to make the entry on the marriage register at once, and with his own hand, even when another priest, delegated by him or by the Ordinary, has officiated at the marriage.

The decree *Ne temere* and this canon renew those prescriptions, completing them and adding new ones.

It is a grave obligation for a parish priest to have a marriage register and to take care that all the marriages celebrated in his parish are entered in it. He must make the entry as soon as possible in order to avoid omission or inaccuracy. The new law does not say that he must make it with his own hand; therefore he may entrust that office to some one else, but the responsibility remains with him (De Smet, n. 338; N. R. T., Mar., 1908, p. 155).

The record should mention the names of the contracting parties, the place and date of the marriage, and other particulars called for by rituals or diocesan regulations. Thus, it may be useful to make note of the officiating priest's name, of the delegation or permission received, the dispensations obtained, the promises made in mixed marriages, the publication or omission of banns. If the marriage was afterward declared null it would be well to insert a note to that effect in the register.

268. 2. A new obligation was introduced by the decree *Ne temere* and is maintained in the new Code—it is that of entering the marriage in the baptismal book also. This may be done by means of a simple marginal note written alongside of the name of the parties in the book of baptisms. If the parties were not baptized in the parish in which they are married, notification has to be sent to the pastor of their place of baptism in order that he may make the proper entry. The notification may be sent directly or through the episcopal curia, and it should be sent as soon as possible, within two days, according to some diocesan regulations. (De Smet, n. 338; Cong. Sac., March 6, 1911.)

269. 3. When a marriage is celebrated without the presence of the parish priest, the obligation to have it entered properly does not cease; it falls on the priest who was present, if there was one, or on the witnesses and parties themselves.

In several countries the civil law imposes that same obligation of recording marriages in the baptismal register, as a means of preventing bigamy or fraudulent unions. It should not be surprising that similar measures, even though somewhat burdensome, should be adopted by the Church, which is the guardian of the sacredness, unity, and indissolubility of marriage. If this law is complied with as strictly as circumstances permit, the inquiry as to the free state of the parties before marriage will be greatly facilitated and many abuses prevented. To find out whether the parties are bound by a previous contract or not it will suffice to consult the baptismal register, or the baptism certificate, which those who were not baptized in the parish have to produce in compliance with a rule on the importance of which the Congregation of the Sacraments insisted again in a decree of March 6, 1911. The object of the Council of Trent and of the present legislation in prescribing the solemn celebration of marriage under pain of nullity was to provide for "the security and the stability of the proof" of the contract. It is for the same purpose that pastors were commanded to have a marriage register. But that end will not be attained at all, or only very imperfectly, unless that system of double registration or some similar measure be adopted, at the present time particularly, with the constant fluctuations of population. The marriage registers can not very often be consulted. Marriage publicly celebrated in one place can remain unknown in another, and if it is entered in only one book of marriages it is easy to conceal it in a remote district. But if the record of all the possible marriages validly contracted by a man is kept together with the record of his baptism, as the latter is usually easy to find, the former will be also.

270. Often, perhaps, in a country where people have come from all parts of the world and move freely from place to place, it may be difficult or even impossible to secure the proper information about the place of baptism, and hence also to send the notification of marriage. In cases of impossibility the obligation ceases. But in itself the law is binding *sub gravi,* as the best authorities teach (Gennari, Breve commento, p. 34), and as can be concluded from its object and purpose. Its observance is most important in the very places where it is hardest, because they are the places in which the free state of prospective spouses is most difficult to establish, the danger of adulterous unions greatest, and the strictest care necessary.

The difficulties which the application of the law offers in practice are not unknown to the Holy See, and yet, when negligences were reported to the Congregation of the Sacraments, the answer was a more detailed instruction on the manner of observing the law and a strong recommendation to Bishops "to use vigilance in securing obedience to these rules, and to bring the transgressors, if they meet any, to the sense of their duty, even by recourse to canonical penalties, if need be." (March 6, 1911.) And now, after an experience of several years, the new Code retains the prescriptions of the *Ne temere* on marriage registration, without any change.

CHAPTER VII

MARRIAGES OF CONSCIENCE

I. NATURE

271. Marriages of conscience are those which are celebrated in the form prescribed by law, but in such a manner that they may remain secret. The banns are not published and the priest and witnesses who assist at the ceremony are bound to secrecy. (De Smet, n. 94.)

II. FORMER LEGISLATION

272. It is contained in the Constitution of Pope Benedict XIV, *Satis Vobis,* published November 17, 1714. (Gasparri, vol. ii, Allegatum viii; Gennari, Consultations Canoniques, Cons. vi.)

When, by the publication of the decree *Tametsi,* clandestine marriages had become invalid, a substitute was found for them in marriages of conscience, which, for a while, threatened to bring back the abuses which the Council of Trent intended to correct. To prevent this, Benedict XIV, without forbidding absolutely marriages of conscience, lays down the conditions on which they may be permitted:

1. Marriages of conscience are not to be permitted except for urgent and very urgent reasons, and special care has then to be taken to find out whether the parties are free.

2. The marriage ought to be celebrated in presence of the parish priest of the parties or, at least,

of a priest venerable for his knowledge and virtue; and the parties ought to be warned, beforehand, that the children will have to be baptized and recognized as legitimate.

3. After the celebration of the marriage, the priest who assisted at it must send to the Ordinary a written report giving the date, place, and witnesses of the ceremony; that document is transcribed, word for word, in a special register kept in the secret archives of the diocese.

4. When a child is born, the father or, if he be dead, the mother, ought to notify the Bishop, who will cause the information to be entered in another special register, so that there be a proof of the legitimacy of the child, whether it was baptized under the name of its parents or under fictitious names. And it must be understood that should the parents fail to comply with that obligation the Bishop reserves to himself the right to make their union public.

III. PRESENT LAW

The present law is substantially the same as that of Benedict XIV.

1. LAWFULNESS OF MARRIAGES OF CONSCIENCE

Can. 1104. Nonnisi ex gravissima et urgentissima causa et ab ipso loci Ordinario, excluso Vicario Generali sine speciali mandato, permitti potest ut matrimonium conscientiae ineatur, idest matrimonium celebretur omissis denuntiationibus et secreto, ad normam canonum qui sequuntur.

273. Only for very grave and very urgent causes can the Ordinary of the place, and he alone, to the exclusion of the vicar-general, unless the latter has a special mandate for that, permit marriages of conscience, that is, marriages which are contracted without publication of banns and secretly, in accordance with the prescriptions of the following canons.

(a) The reasons required for authorizing a marriage of conscience are called very grave and very urgent. Benedict XIV gave as an example the case of two persons publicly living as husband and wife, and whom everybody believes to be married, while in reality they are not.

(b) The matter is considered so important that to grant those authorizations the vicar-general needs a special mandate. Nothing is said of the priest who is to assist at such marriages.

2. OBLIGATION TO KEEP THEM SECRET

Can. 1105. Permissio celebrationis matrimonii conscientiae secumfert promissionem et gravem obligationem secreti servandi ex parte sacerdotis assistentis, testium, Ordinarii ejusque successorum, et etiam alterius conjugis, altero non consentiente divulgationi.

274. Permission to celebrate a marriage of conscience implies a pledge and a grave obligation to keep it secret on the part of the priest who assists at it, of the witnesses, of the Ordinary and his successors, and of each one of the parties as long as the other one is opposed to the disclosure.

Can. 1106. Hujus promissionis obligatio ex parte Ordinarii non extenditur ad casum quo vel aliquod scandalum aut gravis erga matrimonii sanctitatem injuria ex secreti observantia immineat, vel parentes non curent filios ex tali matrimonio susceptos baptizari aut eos baptizandos curent falsis expressis nominibus, quin interim Ordinario intra triginta dies notitiam prolis susceptae et baptizatae cum sincera indicatione parentum praebeant, vel christianam filiorum educationem negligant.

275. This pledge is not binding on the Ordinary in case a scandal or a grave injury to the sanctity of marriage would be likely to follow from the keeping of the secret; or if the parents would not have the children, born of such a marriage, baptized; or would have them baptized under fictitious names, without informing the Ordinary, within thirty days, of the birth of the children, their baptism, and the exact name of the parents; or would neglect the Christian education of the children.

(a) By granting permission for a marriage of conscience, the Ordinary imposes the obligation of secrecy about it on all those who are connected with its celebration; and he implicitly binds himself and his successors to the same secrecy.

(b) But that promise which he makes or obligation which he assumes, is only conditional, like the permission itself for the marriage. It is always

understood, and Benedict XIV asked that the parties be explicitly informed, that permission to keep a marriage secret was granted on condition that no evil consequences would follow from it and that the parties would fulfil their part of the contract.

Secrecy about the marriage should not be a source of scandal, as it would be if people generally came to believe that the parties were living in concubinage; nor should it favor neglect of the duties of the married life, or of the duties to the children who may be born of such unions.

To keep the marriage secret it may sometimes be necessary to baptize the children under fictitious names or not to let the name of the parents appear on the baptism register, but this canon implies that, in such case, the parents are bound to notify the Ordinary within a month, so that proofs of the legitimacy of the children may be kept, as formerly, in the secret archives of the diocese.

3. REGISTRATION

Can. 1107. Matrimonium conscientiae non est adnotandum in consueto matrimoniorum ac baptizatorum libro, sed in peculiari libro servando in secreto Curiae archivo de quo in can. 379.

276. Marriages of conscience should not be entered in the usual marriage and baptism register, but in a special book to be kept in the secret archives of the diocese spoken of in can. 379.

CHAPTER VIII

TIME AND PLACE FOR THE CELEBRATION OF MARRIAGE

I. TIME

Can. 1108. § 1. Matrimonium quolibet anni tempore contrahi potest.

§ 2. Sollemnis tantum nuptiarum benedictio vetatur a prima dominica Adventus usque ad diem Nativitatis Domini inclusive, et a feria IV Cinerum usque ad dominicam Paschatis inclusive.

§ 3. Ordinarii tamen locorum possunt, salvis legibus liturgicis, etiam praedictis temporibus eam permittere ex justa causa, monitis sponsis ut a nimia pompa abstineant.

277. § 1. Marriage may be contracted any day of the year.

§ 2. Only the solemn nuptial blessing contained in the Missal is forbidden from the first Sunday of Advent to Christmas Day inclusively, and from Ash Wednesday to Easter Sunday inclusively.

§ 3. Local Ordinaries may, however, permit it during that time also, for a just cause, and warning the spouses to avoid too much display.

1. By common law, marriage may be celebrated any day of the year both validly and licitly, and, considering the matter in itself, at any hour of the day, since there is no mention of the time. Particular law may put restrictions on that liberty.

278. 2. During what is called the forbidden time the common law of the Church forbids the solemnities of marriage.

(a) Before the Council of Trent, in some places at least, the prohibited time extended from the first Sunday in Advent to Epiphany, from Septuagesima Sunday to the Sunday after Easter, and from the Monday before the Ascension to Saturday after Pentecost.

The Council of Trent reduced it to the period from the first Sunday in Advent to the octave of the Epiphany, and from Ash Wednesday to the Sunday after Easter. The present law shortens it still by a few weeks, since it will extend only from the first Sunday in Advent to Christmas Day and from Ash Wednesday to Easter Sunday inclusively. The time is counted from midnight to midnight, as commonly understood.

(b) The solemnities forbidden during that time are explained by the Ritual to mean the solemn nuptial blessing given at Mass, the escorting of the bride, and the nuptial feast. The present law speaks only of the nuptial blessing. The escorting of the bride to her new home is not in use any more, and it was admitted that a moderate repast, according to the customs of the place, was not condemned during the prohibited time.

279. 3. Moreover, Bishops are given the power, which they did not possess before, to permit the solemn nuptial blessing during the prohibited time. All that is required is that there be a just cause and that the parties be warned to avoid worldly display which would be unbecoming during a time of penance.

By particular law or custom even the celebration of marriage may be unlawful during the prohibited time.

II. PLACE

Can. 1109. § 1. Matrimonium inter catholicos celebretur in ecclesia paroeciali; in alia autem ecclesia vel oratorio sive publico sive semi-publico, nonnisi de licentia Ordinarii loci vel parochi celebrari poterit.

§ 2. Matrimonium in aedibus privatis celebrari Ordinarii locorum in extraordinario tantum aliquo casu et accedente semper justa ac rationabili causa permittere possunt; sed in ecclesiis vel oratoriis sive Seminarii sive religiosarum, Ordinarii id ne permittant, nisi urgente necessitate, ac opportunis adhibitis cautelis.

§ 3. Matrimonia vero inter partem catholicam et partem acatholicam extra ecclesiam celebrentur; quod si Ordinarius prudenter judicet id servari non posse quin graviora oriantur mala, prodenti ejus arbitrio committitur hac super re dispensare, firmo tamen praescripto can. 1102, § 2.

280. § 1. Marriage between Catholics shall be celebrated in the parish church; to celebrate it in another church or chapel, either public or semipublic, the permission of the local Ordinary or of the pastor is necessary.

§ 2. The celebration of marriage in private houses may be permitted by the local Ordinaries only in some extraordinary case, always demanding a just and reasonable cause; but in the churches or chapels of seminaries or of convents the Ordinaries shall never permit it except in cases of necessity and all proper precautions being taken.

§ 3. Marriages between Catholic and non-Catholic parties are to be celebrated outside of the church; if, however, the Ordinary judged prudently that greater evils would follow from the observance of this rule, it is left to his discretion to dispense from it; without the prescription of can. 1102, § 2, ceasing to bind.

1. In one of the chapters of the Council of Trent (Sess. xxiv, c. 1, de Ref. Mat.) it was implied that, regularly, marriage was to be celebrated in church, but no formal law existed on that point.

The Roman Ritual (Tit. vii, ch. 1, n. 16) says that it is most proper to celebrate marriage in church; whence it was concluded that to celebrate it in private houses or even in private chapels, although not forbidden, by common law would be improper. Public or semipublic chapels were, in this matter, assimilated to churches, unless some special circumstance made them unfit places for a marriage ceremony.

281. 2. It is now explicitly decreed *(a)* that marriages be celebrated in the parish church; *(b)* that to celebrate them in another church or in a chapel, public or semipublic, the permission of the Ordinary or of the pastor is necessary and sufficient; *(c)* that to celebrate them in private houses—and this includes, no doubt, private oratories—the pastor's permission does not suffice; that of the Ordinary is required, and he is to grant it only by way of rare exception, in extraordinary cases, and always on condition that there is a just and reasonable cause for it; *(d)* that the permission to celebrate marriages in seminary or convent chapels should be granted still more rarely, only in cases of real necessity, and then all the precautions necessary ought to be taken to avoid what might be unbecoming.

3. Mixed marriages ought not to be celebrated in church, unless the Ordinary permits it to avoid greater evils. Mass remains forbidden.

CHAPTER IX

EFFECTS OF MARRIAGE

I. INDISSOLUBILITY OF MARRIAGE

Can. 1110. Ex valido matrimonio enascitur inter conjuges vinculum natura sua perpetuum et exclusivum; matrimonium praeterea christianum conjugibus non ponentibus obicem gratiam confert.

282. From valid marriage arises between the spouses a bond of its nature perpetual and exclusive; Christian marriage confers, besides, grace upon parties who place no obstacle to it.

The contract of marriage is indissoluble of its nature, independently of positive legislation; between pagans as between Christians, although its elevation to the dignity of a sacrament has added to its firmness. It is exclusive; the right it gives to the parties can not be given to other persons at the same time. Marriage contracted between two Christians is a sacrament and produces grace *ex opere operato.* If only one of the contracting parties is baptized, it is doubtful whether there is a sacrament for the baptized party; because it seems difficult, on account of the unity of the contract, for the marriage bond to be sacramental for one of the parties and not for the other. (De Smet, n. 107; Perrone, ii, pp. 289-294.)

II RELATIVE RIGHTS OF THE SPOUSES

Can. 1111 Utrique conjugi ab ipso matrimonii initio aequum jus et officium est quod attinet ad actus proprios conjugalis vitae.

283. Both spouses have from the beginning of marriage the same rights and duties with regard to the acts of the conjugal life.

Can. 1112. Nisi jure speciali aliud cautum sit, uxor, circa canonicos effectus, particeps efficitur status mariti.

Unless otherwise ordained, the wife, before the ecclesiastical law, shares in the husband's status.

1. By natural law the husband and wife are equal in what pertains to the conjugal life The husband is the head of the family and in that respect he is the superior of the wife, who owes him obedience and submission, but in what pertains to marital relations they have the same rights and the same duties. The husband owes fidelity to the wife, as well as the wife to the husband. Adultery is, in itself, as unjust on the part of one as on the part of the other. Neither could take a vow of chastity nor embrace the religious life without the other's consent.

284. 2. By ecclesiastical law the wife has the same canonical standing and dignity as the husband. Exceptions may be made to this rule, as in the civil order there are marriages, called "morganatic," which do not raise the wife to the condition of the man; but this would require a special ordinance.

Even when in the eyes of the civil law a woman does not enjoy the full rights of a wife, she does in the eyes of canon law unless otherwise decreed. By marriage "the very being or legal existence of the wife is merged into that of her husband; hence by fiction of law, she is, generally speaking, supposed to live where he lives, though in reality they live apart, and consequently they come under the authority of the same ecclesiastical superiors and the same ecclesiastical courts. This ceases when they are legitimately separated."

III. DUTIES OF PARENTS

Can. 1113. Parentes gravissima obligatione tenentur prolis educationem tum religiosam et moralem, tum physicam et civilem pro viribus curandi, et etiam temporali eorum bono providendi.

285. Parents are under very grave obligation, according to their means, to attend to the education of their children, both religious and moral, physical and civil, and also to provide for their temporal good.

This obligation is imposed upon parents by the very law of nature; canon law reaffirms, defines, and enforces it. The Catholic Church has always maintained that the rights and duties of parents extend to all the functions of education. As far as depends on them, they are bound to make their children strong and good men and women, good Christians and good citizens. They should look after their temporal welfare, principally when children are not able to provide for themselves, but afterward, also, to help them to improve their social condition.

IV. LEGITIMACY OF CHILDREN

Can. 1114. Legitimi sunt filii concepti aut nati ex matrimonio valido vel putativo, nisi parentibus ob sollemnem professionem religiosam vel susceptum ordinem sacrum prohibitus tempore conceptionis fuerit usus matrimonii antea contracti.

286. Children are legitimate when they were conceived in, or born of, a valid or putative marriage, unless, the parents having made solemn religious profession or received Sacred Orders, the use of the marriage contracted before was forbidden them at the time of the conception.

1. By strict right only those children are legitimate whose parents are validly married. The Roman law and the ancient canon law did not recognize any others. But since the twelfth century the Church has admitted as sufficient for the legitimacy of children putative marriages; *i.e.,* those marriages which, although null, are thought to be valid and had been contracted in good faith, at least by one of the parents. The law was interpreted as applying whether the good faith was due to an error of fact or one of right. But it was always required that the marriage should have been celebrated publicly. The new law introduces no change in the former dis-

cipline and therefore should be interpreted in the same sense.

2. If parties, validly married, make solemn religious profession or receive Sacred Orders, there arises between them an impediment which can not render their marriage null, since it is indissoluble, but renders relations illegitimate, and the Church looks upon children born of such relations as if they had been born of fornication.

V. PRESUMED PATERNITY

Can. 1115. § 1. Pater is est quem justae nuptiae demonstrant, nisi evidentibus argumentis contrarium probetur.

§ 2. Legitimi praesumuntur filii qui nati sunt saltem post sex menses a die celebrati matrimonii, vel intra decem menses a die dissolutae vitae conjugalis.

287. § 1. The father is he whom legitimate marriage points out as such, unless the contrary be proved by conclusive arguments.

§ 2. Children born at least six months after the celebration of the marriage or within ten months of the dissolution of conjugal life are presumed to be legitimate.

1. Like the old Roman law, canon law presumes that the father of the child is the man who was the mother's legitimate husband at the time of the conception or at least of the birth. This is, however, a simple presumption which admits of proofs to the

contrary; only they must be convincing ones; the benefit of the doubt, if any remains, is given to the child.

2. Conception is supposed to have taken place during the marriage and to render the children legitimate if they are born not less than 180 days after the marriage was contracted, and not more than 300 days after separation. This again is only a presumption.

VI. LEGITIMATION OF CHILDREN

Can. 1116. Per subsequens parentum matrimonium sive verum sive putativum, sive noviter contractum sive convalidatum, etiam non consummatum, legitima efficitur proles, dummodo parentes habiles exstiterint ad matrimonium inter se contrahendum tempore conceptionis, vel praegnationis, vel nativitatis.

288. By the subsequent marriage of the parents, whether real or putative, whether newly contracted or revalidated, even only ratified, the offspring becomes legitimate, provided the parents were able to contract marriage at the time of the conception, of the pregnancy, or of the birth.

Can. 1117. Filii legitimati per subsequens matrimonium, ad effectus canonicos quod attinet, in omnibus aequiparantur legitimis, nisi aliud expresse cautum fuerit.

289. Children legitimated by subsequent marriage are, in the eyes of canon law, assimi-

lated in all things to legitimate children, unless expressly ordained otherwise by law.

1. Legitimacy is an effect of the natural law; still it depends also on the positive law, which can extend some of its privileges to children who would not otherwise be entitled to them.

The Church, at least since the time of Alexander III, has used that power in favor of illegitimate children whose parents have afterward contracted marriage. This was done for the sake of the children, who are innocent, and also to encourage persons who had illicit intercourse to become legitimately united. By a fiction of the law the marriage is referred back to the time of the children's conception or birth. For that reason it is demanded that the marriage should have been possible at that time, that is, that there should be no impediment between the parents at the time of the conception or of the birth or between the two. It is not necessary that it should have been possible at the time of the conception as some canonists thought and even children whose conception is adulterine may have the benefit of this law if the impediment disappears before their birth. It will likewise be certain henceforth that this effect is produced by putative marriage. The legitimation follows from the very fact of the marriage of the parents without any special declaration and whether it takes place immediately after the birth of the child or long after.

If the mother would marry one who is not the father of the child, even though he would legally acknowledge it, the child would not be legitimated. However, it is presumed that he who marries the mother is the child's father, and the testimony of the two parties affirming that such is the case would be accepted as sufficient evidence unless there would be proofs to the contrary.

290. 2. Legitimation by subsequent marriage confers the right to receive Orders and be promoted to ecclesiastical dignities, except the Cardinalate. Sixtus V introduced that exception in the Const. *Postquam,* Dec. 3, 1586. The Code adds the Episcopate.

Legitimation by papal rescript has generally not the same efficacy. (De Smet, n. 168; Wernz, n. 686; Putner, n. 120.)

CHAPTER X

MUTUAL SEPARATION OF MARRIED PEOPLE

291. That separation may imply the dissolution of the marriage bond—then we have divorce properly so called, absolute divorce, *divortium plenum.* Or it may leave the marriage bond intact and mean only the cessation of common life—we have then limited divorce or simple separation.

ARTICLE I

DISSOLUTION OF THE MARRIAGE BOND

As said above, every marriage validly contracted is indissoluble by the law of nature. Christian marriage was made a still more sacred contract when it was raised to the dignity of a sacrament. It is not, however, above God's power to make an exception to a general divine law as long as this is not against the absolutely essential order of things. Exceptions were made under the old dispensation to the law of marriage indissolubility. Are there any under the new? Has the Church received authority to break the marriage bond in certain cases? We may examine that question in regard to the various kinds of marriages defined in the Introduction. (Can. 1015.)

A. Marriage Ratified and Consummated

Can. 1118. Matrimonium validum ratum et consummatum nulla humana potestate nullaque causa, praeterquam morte, dissolvi potest.

Valid marriage ratified and consummated can be dissolved by no human power and by no other cause than death.

A Christian marriage which has been consummated is complete in every respect, and should therefore possess more firmness and more stability than any other. If God had so willed, it could have been made dissoluble by adultery, as the Greeks and Protestants claim it is. But the Catholic Church has always maintained that there is no evidence of any such divine disposition, and consequently the principle holds good: "What God has joined together let no man put asunder."

B. Marriage Only Ratified

Can. 1119. Matrimonium non consummatum inter baptizatos vel inter partem baptizatam et partem non baptizatam, dissolvitur tum ipso jure per sollemnem professionem religiosam, tum per dispensationem a Sede Apostolica ex justa causa concessam, utraque parte rogante vel alterutra, etsi altera sit invita.

292. Marriage only ratified between two baptized parties or between one baptized and one unbaptized, is dissolved by the very fact of solemn religious profession, and also by dispensation of the Holy See, granted for a just cause at the request of the two parties or even of one of them, against the wish of the other.

A merely ratified marriage was considered by Gratian and the school of Bologna as no real marriage and therefore not indissoluble. Peter Lombard and the school of Paris found in it all the essential elements for a marriage contract and maintained its absolute indissolubility. The controversy was settled by the Roman Pontiffs, particularly Alexander III (1159-1181), who affirmed the indissolubility of *matrimonium ratum,* admitting, however, against Peter Lombard, that it can be dissolved by religious profession and Papal dispensation. (c. 3, x, iv, 4; Esmein, Le mariage en droit canonique, vol. i, p. 124 seq.)

I. RELIGIOUS PROFESSION

293. 1°. That solemn religious profession dissolves a merely ratified marriage was authoritatively declared by Alexander III (c. 2 and 7, x, iii, 32) and Innocent III (ibid., c. 14), universally received in practice, after them, and defined by the Council of Trent. (Sess. xxiv, De Sacramento Matrimonii, Can. 6.) The only question which remained controverted was whether religious profession dissolved marriage by divine, or, as more commonly admitted, by ecclesiastical, right.

2°. It is only solemn religious profession that possesses that power, not a simple vow of chastity, nor the reception of Sacred Orders. The marriage is dissolved when the profession is made, without any further formalities, and the other partner becomes free at once to marry again. It does not matter how long the marriage had existed, provided it was not consummated. But if consummated, even through violence, deceit, or injustice, it is absolutely indissoluble.

3°. The present law, like earlier documents, speaks only of *matrimonium ratum non consummatum;* but canonists conclude that, *a fortiori,* solemn religious profession dissolves *matrimonium legitimum non consummatum,* which possesses less firmness. Whether it would dissolve also a *matrimonium legitimum consummatum* coming under the authority of the Church by the baptism of one of the parties, or the *matrimonium consummatum* become ratified by the baptism of the two parties, is doubtful, for there is no text conceding that power to solemn vows, and there exists no certain example of such dissolution. The efficacy of the religious profession does not extend beyond the limits assigned to it by the law.

II. PAPAL DISPENSATION

294. 1. The Roman Pontiffs have exercised for centuries the power of dissolving marriages merely ratified; there can be no doubt that they possess it, not of their own authority, but as God's ministers and representatives.

2. They have exercised that power when two conditions were fulfilled:

(a) It must be proved juridically that the marriage was not consummated; this may be established by medical examination or by circumstances showing that the parties could not have conjugal relations after marriage, or by the testimony of the parties themselves confirmed by that of seven witnesses on either side, *testimonium septimae manus.*

(b) There must be a grave reason. A dispensation granted without sufficient reason would be not only unlawful, but more probably invalid, for the Pope exercises here a ministerial and delegated power. (Gasparri, n. 1081.)

As soon as the dispensation is granted, both parties are free to marry, provided there be no other obstacle.

Those dispensations are granted only by the Sovereign Pontiff. (Can. 1985.) All such cases have to be referred to him, through the Congregation of the Sacraments. Usually the Ordinary is delegated to make the proper investigations. The special procedure to be followed in those causes is described in the Constitution *Dei miseratione* or in an instruction of the Holy Office which gives a simplified form. (Gasparri, vol. ii, Allegatum ix, 3; Can. 1962, 1963, 1966-1969, etc.)

295. *Corollary.* It may be asked here whether the Sovereign Pontiffs have also the power of dissolving (1) a marriage *legitimum non consummatum*—i.e., one contracted between infidels and never consummated; (2) a marriage *legitimum et consummatum,* contracted and consummated in infidelity; (3) a marriage *consummatum et ratum,* contracted and consummated in infidelity, then rendered *ratum* by the baptism of both parties, but not consummated after baptism; (4) marriage consummated again after the baptism of *one* of the parties; (5) marriage consummated after the baptism of both parties.

The Pope has no authority over the marriage of two infidels, until one of them is baptized. This condition being fulfilled there seems to be no doubt that he will have power to dissolve the marriage in the first case and not in the fifth. (Gasp. 1108.) Whether he will have it in the second, third, and fourth is controverted. Many claim that such a power was exercised, particularly by Gregory XIII, who declared valid marriages contracted by converts after the baptism of the two parties, *i.e.,* after the first marriage had become *ratum* and the Pauline privilege was no more applicable. (Cf. infra.)

C. Legitimate Marriage or Marriage of Infidels and Pauline Privilege

I. EXISTENCE AND OBJECT OF THE PRIVILEGE

Can. 1120. § 1. Legitimum inter non baptizatos matrimonium, licet consummatum, solvitur in favorem fidei ex privilegio Paulino.

**§ 2. Hoc privilegium non obtinet in matrimonio inito cum dispensatione ab impedimento dispari-
inter partem baptizatam et partem non baptizatam
tatis cultus.**

296. § 1. Legitimate marriage between unbaptized persons, even if consummated, is dissolved in favor of the Faith by virtue of the Pauline Privilege.

§ 2. This privilege is not applicable to a marriage contracted between a baptized and an unbaptized person with dispensation from the impediment of disparity of cult.

1. The marriage of infidels, although a merely natural contract, is, of itself, indissoluble. But as it would happen frequently that converts, after receiving Baptism, would be abandoned by their unconverted partners or obliged to abandon them, in order that the burden of perpetual continence should not be imposed upon them through the malice of unbelievers, an exception to the law of the indissolubility of marriage was made in their favor. This is what is called the Privilege of the Faith, *Casus Apostoli,* Pauline Privilege, because it was promulgated by St. Paul in the name of Christ or introduced by him in virtue of special authority. (1 Cor. vii, 8-15.)

2. The privilege supposes a marriage contracted between two unbaptized persons, whether infidels properly so called, or members of a Christian sect; it consists in this, that if, one of the parties having received Baptism, the other refuses to be baptized or at least to live peaceably, the baptized party may contract another marriage.

The privilege does not apply in the case of a marriage between a baptized and an unbaptized party, as is explicitly stated; still less in the case of two baptized parties one of whom would afterward fall into apostasy.

Actual reception of Baptism is required; willingness or desire to be baptized does not suffice.

Some canonists would exclude from this privilege those who are baptized in a false sect. Nothing in the texts supports that view.

II. INTERPELLATIONS: NECESSITY, OBJECT, DISPENSATION

Can. 1121. § 1. Antequam conjux conversus et baptizatus novum matrimonium valide contrahat, debet, salvo praescripto can. 1125, partem non baptizatam interpellare:

1.° An velit et ipsa converti ac baptismum suscipere;

2.° An saltem velit secum cohabitare pacifice sine contumelia Creatoris.

§ 2. Hae interpellationes fieri semper debent, nisi Sedes Apostolica aliud declaraverit.

297. § 1. Before the converted party may contract another marriage validly he must, except in cases provided for in can. 1125, interpellate the unbaptized party and ask:

1.° Whether he is willing to be converted also and receive Baptism;

2.° Or, at least, whether he is willing to live peaceably without blaspheming the Creator.

§ 3. These interpellations ought always to be made, unless the Apostolic See direct otherwise.

1.° *Necessity of the Interpellations*

The baptized party can make use of the Pauline Privilege only if the other one abandons him. To ascertain the existence of that condition he must interpellate his unconverted partner. There might be other means of finding his disposition, but the interpellation is prescribed, at least by ecclesiastical law, for the validity of the subsequent marriage, as the text of the present canon clearly implies. It should never be omitted, therefore, without dispensation, even when the answer has been given already equivalently; as when the unconverted party had expelled the other or obtained a civil divorce and contracted a new marriage. (S. C. de Propaganda Fide, March 3, 1816.) If he had become guilty of adultery, the Christian party would be entitled to perpetual separation, but it is not certain that the right to marry again would be acquired also thereby. (Gasparri, n. 1093.) If the interpellation is impossible, dispensation should be obtained. The interpellation should be made after the baptism; if it was made before, it should be repeated after or a dispensation obtained. (Inst. S. O., June 3, 1874; Collect., n. 1357.)

2.° *Object of the Interpellations*

298. Two questions are asked. When the first one is answered negatively the Holy See frequently dispenses from the second, for conversion of the infidel party is an almost necessary condition for peaceful cohabitation. But whether the first is answered affirmatively or negatively, if the answer to the second one is negative, that is, when the infidel party refuses to live peaceably, the convert has the privilege of contracting another marriage. Hence the importance of the second question.

3.° *Dispensation*

299. Dispensation can be granted only by the Holy See, because the supreme authority in the Church alone has mission to interpret the divine ordinances and power to dispense from universal ecclesiastical laws. Dispensation, which is here rather an interpretation of the divine law, is granted either in individual cases or by general concessions, as by can. 1125. It may be from one or from both questions. Thus converted polygamists have frequently to ask their first and only legitimate wife only the first question. If she refuses to be baptized they may marry any one of their other wives provided she consents to become a Christian.

The power to dispense from the interpellation is also granted to some Ordinaries, particularly in missionary countries, with permission to subdelegate it to some of their priests.

300. By a decree of the Holy Office of August 11, 1859, all Bishops and vicars-apostolic were granted that power in cases of necessity when there was no time for recourse to Rome. It has not been withdrawn explicitly and, therefore, may still be exercised. (See can. 1125. It was included in the faculties granted to Ordinaries in the United States, Form T, n. 13.)

The dispensation requires a serious reason. Ordinarily it is the well-ascertained impossibility or the uselessness of the interpellation, the refusal of the infidel to give an answer, danger to the Christian, danger of arousing persecution, doubt about the validity of the first marriage, etc. (H. O., June 20, 1866; March 13, 1901; Putzer, n. 130; De Smet, n. 195.) If the marriage is not contracted within a year, a new dispensation becomes necessary. This rule, however, does not apply to the interpellation; once it has been made, there is no obligation of renewing it, even if the marriage is delayed over a year. It may be noted here that a marriage contracted with a dispensation obtained from the Holy See is valid even though it is found later on that at the moment it was celebrated the supposed infidel party had already received Baptism or was prevented from expressing willingness to cohabit peaceably. (Gregory XIII, Const. *Populis,* Jan. 25, 1585; Ben. XIV, Const. *In suprema,* Jan. 16, 1745; Coll. Prop. 1305, 1307.)

4.° *Form of the Interpellations*

Can. 1122. § 1. Interpellationes fiant regulariter, forma saltem summaria et extrajudiciali, de auctoritate Ordinarii conjugis conversi, a quo Ordinario concedendae sunt quoque conjugi infideli, si quidem eas petierit, induciae ad deliberandum, eo tamen monito, fore ut, induciis inutiliter praeterlapsis, responsio praesumatur negativa.

§ 2. Interpellationes etiam privatim factae ab ipsa parte conversa, valent, imo sunt etiam licitae, si

forma superius praescripta servari nequeat; hoc tamen in casu de ipsis, pro foro externo, constare debet duobus saltem testibus vel alio legitimo probationis modo.

301. § 1. The interpellation shall regularly be made in at least the summary extrajudicial form, by authority of the converted spouse's Ordinary, who likewise grants time for deliberation if the infidel party asks for it, warning him, however, that, the time having elapsed, silence will be taken for a negative answer.

§ 2. The interpellation made privately by the converted party himself is valid also; it is even licit if the form prescribed above can not be observed; in that case, however, it must be possible to prove that it has been made, by the testimony of at least two witnesses or any other legitimate evidence.

1. The formalities required here are the same as for a summary trial: *(a)* The Ordinary of the converted party or one delegated by him summons the infidel before the ecclesiastical court, on a certain day, to answer the interpellation. *(b)* The infidel party appears before the judge, who, in the name of the convert and in presence of two sworn witnesses, puts to him the two questions. *(c)* If the answers are negative the judge declares the convert free to marry again or remain a celibate. (Putzer, nn. 129, 132; Zitelli, Disp., p. 122.) A record of the proceedings should be kept in the diocesan archives for future reference.

The questions should be put clearly and explicitly, so that the unbaptized party may understand their full meaning and import. If he was asked only whether he is willing to become a Christian, without any reference to the marriage, whether he is willing to take back his wife, the interpellation might be null, as was declared by Gregory XVI in a particular case (Jan. 17, 1836), or it might be of doubtful value. (Gasparri, n. 1104, 4°.)

If the infidel spouse asks for some time to reflect, the request is granted when reasonable, provided it can be done prudently and without danger to the converted spouse's faith and morals. The Ordinary has authority to fix a certain time within which the answers must be given.

302. 2. The interpellation may be made also privately by the party himself, personally or through some one else, orally or by letter, in presence of witnesses or secretly. This will always suffice for the validity and for the internal forum. The legal form, however, is obligatory whenever it is possible to observe it; and the private interpellation will be of no value in the external forum unless there be proofs of it.

5.° *Effects of the Interpellations*

Can. 1123. Si interpellationes ex declaratione Sedis Apostolicae omissae fuerint, aut si infidelis eisdem negative responderit expresse vel tacite, pars baptizata jus habet novas nuptias cum persona catholica contrahendi, nisi ipsa post baptismum dederit parti non baptizatae justam discedendi causam.

303. If the Apostolic See has authorized the omission of the interpellations or if the infidel party has answered in the negative, expressly or tacitly, the baptized party has the right to contract a new marriage with a Catholic person, unless he has, since his baptism, given to the other a legitimate cause for separation.

(a) As soon as a declaration of the Apostolic See that the interpellation may be omitted has been obtained, the convert is free to contract a new marriage.

(b) If the interpellation has been made and the infidel in answer to the first question consents to become a Christian and receives Baptism, the marriage holds. "When the husband is converted," says Innocent III (c. 8, x, iv, 19) "and his wife receives also Baptism before he was lawfully married again, he will be bound to take her back." It does not matter in that case how long the wife is baptized after the husband.

304. *(c)* If the infidel should answer the first question affirmatively, but the second one negatively, that is, would consent to be baptized, but refuse to cohabit or live peacefully, the Holy Office declared (July 8, 1891) that the convert may marry validly, provided he does so before the other party has received Baptism. (H. O., April 30, 1908; Canoniste Contemporain, Août, 1908, p. 514.)

Unreasonable delay in complying with the promise to receive Baptism might be a sufficient reason to obtain from the Ordinary permission to contract a new marriage. (H. O., July 4, 1855; Coll. 1113;

Ami du Clergé, Mars 7, 1912.) Sufficient time, however, has to be given to prepare for Baptism, at least six months or more, according to circumstances, of which the Bishop is judge. (H. O., Nov. 29, 1882.)

If the infidel refuses to become a Christian, but consents to live peaceably with the convert, the Pauline Privilege is not applicable. At times dispensation is granted from the second question and a new marriage permitted as soon as the first question has been answered negatively. Regularly, both questions should be asked.

If the infidel answers the second question negatively, that is, if he refuses to live with the baptized consort or to live peaceably, the marriage may be dissolved. It does not make any difference to what motives the refusal is due, even if it was simply a case of impossibility, provided the Christian party be not responsible for it. The Holy Office permitted marriage to a convert whose wife had been taken away without hope of recovery, even though she would be willing to be baptized and live with him, and even if it was the husband himself who had sold her, provided he had not done so since his baptism. (H. O., July 8, 1891; June 12, 1850.)

The Christian could not take advantage of the Pauline Privilege if he had given the other a just cause for separation, as by committing adultery; but the adultery must be certain, committed since baptism, and not condoned.

The infidel may refuse to cohabit, or consent to cohabit, but not peaceably. The refusal may be explicit, implicit, tacit, equivalent. He refuses equivalently when he makes cohabitation physically or morally impossible, by blaspheming the Creator, leading the Christian to sin, retaining concubines, opposing the Christian education of the children, etc. If cohabitation was made impossible by some other person than the unbaptized consort, there might be a sufficient cause for separation, but not for application of the Pauline Privilege. (S. C. de Prop. Fide, March 5, 1816, ad 6^{um}.)

(d) At times the promise of the infidel is clearly not sincere. If this can be proved, it may be treated as a refusal and marriage permitted. But as frequently the evidence would be insufficient, recourse should be had to the Holy See or to the Bishop for dispensation.

305. *(e)* The right to contract a new marriage is not lost by delay.

Can. 1124. Conjux fidelis, licet post susceptum baptismum denuo matrimonialiter cum parte infideli vixerit, jus tamen novas celebrandi nuptias cum persona catholica non amittit, ideoque potest hoc jure uti, si conjux infidelis, mutata voluntate, postea discedat sine justa causa, vel jam non cohabitet pacifice sine contumelia Creatoris.

The baptized spouse does not lose the right to contract a new marriage by continuing the marital life with the infidel party after baptism, and that right may be used later if the infidel, having become of a different mind, withdraws without just cause or does not cohabit peacefully, without blaspheming the Creator.

The *matrimonium legitimum* does not become *ratum* by the baptism of one of the spouses. The fact that it was consummated again after that baptism does not change its character, and the conditions for the application of the Pauline Privilege may be verified after several months the same as after several days.

III. SPECIAL PROVISIONS

Can. 1125. Ea quae matrimonium respiciunt in constitutionibus Pauli III *Altitudo,* Jun. 1, 1537; S. Pii V *Romani Pontificis,* Aug. 2, 1571; Gregorii XIII *Populis,* Jan. 25, 1585, quaeque pro peculiaribus locis scripta sunt, ad alias quoque regiones in eisdem adjunctis extenduntur.

306. What refers to marriage in the Constitutions of Paul III, *Altitudo,* June 1, 1537; of St. Pius V, *Romani Pontificis,* August 2, 1571; of Gregory XIII, *Populis,* January 25, 1585; and was decreed for some particular places, is extended to other countries in the same conditions.

1. By the Constitution of Paul III, converts in the West Indies, who, as pagans, had married several wives in accordance with the custom of the country, and did not remember which they had married first, were permitted to keep the one they preferred and contract a regular marriage with her; if they remembered which they had taken first, they were to retain that one, and dismiss the others. Dispensa-

tion was thus granted from interpellations in certain cases of impossibility.

307. 2. To Pius V it had been represented that as among the pagan Indians it was the custom to have several wives and dismiss them for trifling reasons, the practice had been introduced by the missionaries, when those Indians would be converted, to allow them to retain the wife who would be baptized with her husband; and because it happened frequently that the one thus retained was not the first wife, doubts arose about the validity of such marriages. Seeing that it would be hard to separate the converted husband from his baptized wife, particularly as the first one would be difficult to find, wishing to provide for the welfare of the Indians and to calm the conscience of the missionaries, the Pope sanctioned what had been done in the past and approved the same practice for the future.

In this case the dispensation granted from both interpellations is, in some respects, more extensive than in the preceding one. Whether the first wife is known or not, the convert may retain the one who is baptized with him. She must, however, be baptized, which was not required by the Constitution *Altitudo.*

The convert may retain the wife who is baptized together with him even if the first one is willing to be baptized later. Would he have the same privilege if the first was baptized at the same time, or had been baptized before? This concession does not clearly cover that case.

308. 3. Gregory XIII went still further. The case proposed to him was that of married infidels of Ethiopia, Angola, Brazil, and other parts of the West Indies, who were made captives and carried off into distant countries, so that if later on either the party left at home or the one carried away became a Catholic, it was impossible to reach his or her consort and make the regular interpellations. The Pope, considering that those marriages contracted between infidels, although real contracts, are not so firm that they can not be dissolved if necessity demands, in virtue of his supreme authority, gave to all Ordinaries and pastors in those countries, to all the priests of the Society of Jesus, who had power to hear confessions there, faculties to grant to sincere converts in that situation, the necessary dispensation, so that without interpellating the party whom they married before baptism, or without waiting for the answer, they might contract a new marriage with any Christian, provided it had been ascertained in a summary and extrajudicial manner that the party could not be interrogated or, if the interpellation had been made, no answer had been received within the fixed time. And it was added that the marriage would be valid even if it was found out later that the party was prevented from answering or even was already baptized at the time the second marriage was contracted. This last clause implies that not only dispensation is granted from all interpellations, but that a marriage which had become ratified by the baptism of both parties is dissolved. Is this only an application of the Pauline Privilege? Some maintain it is nothing more, but for many it is the exercise, by the Pope, of the power of dissolving marriages contracted in infidelity, even after they have become ratified, provided they are not consummated after ratification.

The above concessions are now extended to the whole Church.

IV. DISSOLUTION OF THE MARRIAGE CONTRACTED IN INFIDELITY

Can. 1126. Vinculum prioris conjugii, in infidelitate contracti, tunc tantum solvitur, cum pars fidelis reapse novas nuptias valide iniverit.

309. The bond of the first marriage, contracted in infidelity, is dissolved only when the baptized party contracts a new marriage validly.

The baptism of the convert and the refusal of the infidel to cohabit do not dissolve the marriage, but only give to the baptized spouse the right to contract another; and it is when he actually exercises that right that the first marriage is dissolved, provided that the new union be valid. If the convert does not choose to marry again, the marriage contracted in infidelity holds good and the infidel can not contract a new one validly.

V. PRESUMPTION IN DOUBTFUL CASES

Can. 1127. In re dubia privilegium fidei gaudet favore juris.

310. In doubtful cases the law favors the privilege of the Faith.

The law favors the privilege—that is, the liberty—of the convert. Thus, when it is doubtful whether or not the first marriage was valid, whether the conditions were fulfilled for the application of the Pauline Privilege, whether the convert has not given the other party legitimate cause for separation after baptism, the doubt is solved in favor of the convert. Again, if the validity of the marriage contracted in infidelity is impugned on the ground of want of consent, the testimony of the converted party is accepted as sufficient evidence. This is done to favor conversions, and, according to some, it is a proof that the Church could dissolve the marriage contracted in infidelity in case it would be valid. (De Smet, n. 196; Catholic Encyclopedia, Divorce.)

ARTICLE II

LIMITED DIVORCE, OR SEPARATION AS TO BED, BOARD, AND DWELLING-PLACE

1.° GENERAL PRINCIPLE

Can. 1128. Conjuges servare debent vitae conjugalis communionem, nisi justa causa eos excuset.

311. Married persons are bound to live together unless they have a just cause for separation.

1. Conjugal cohabitation implies community of dwelling-place, of board, of bed or bedchamber, at least habitually and as far as circumstances permit.

This is demanded by the mutual rights and duties of husband and wife and the very end of marriage. As the husband is the head of the family, the wife ought, as a rule, to follow him wherever he goes.

312. 2. Cohabitation, however, is not so essential that the bond of marriage can not exist without it or that separation may never become legitimate. Serious reasons will be required, for separation is not the normal condition, and it may lead to disorders; but occasions may arise when further cohabitation becomes unadvisable, or even unseemly and morally impossible. Cessation of married life without dissolution of marriage is then permitted. The Council of Trent maintained the discipline of the Church on this point against the attacks of Protestants. (Sessio xxiv, c. 8; Esmein, vol. ii, p. 309.)

313. 3. St. Paul speaks (1 Cor. vii, 5) of temporary cessation of marriage relations by mutual consent from religious motives. This belongs to the internal forum, and the law does not deal with such cases. Nor does it refer to complete and permanent separation with a view to a more perfect life; that is, the reception of Orders or entrance in religion. This also is done by mutual consent, and implies no violation of any one's rights. It is permissible as long as it does not lead to the violation of the moral law. In such cases the Church demands that when one party receives Orders or embraces the religious life the other party should also enter a religious community or at least take a vow of chastity in the world.

2.° PRINCIPAL CAUSE OF SEPARATION—ADULTERY

Can. 1129. § 1. Propter conjugis adulterium, alter conjux, manente vinculo, jus habet solvendi, etiam in perpetuum, vitae communionem, nisi in crimen consenserit, aut eidem causam dederit, vel illud expresse aut tacite condonaverit, vel ipse quoque idem crimen commiserit.

§ 2. Tacita condonatio habetur, si conjux innocens, postquam de crimine adulterii certior factus est, cum altero conjuge sponte, maritali affectu, conversatus fuerit; praesumitur vero, nisi sex intra menses conjugem adulterum expulerit vel dereliquerit, aut legitimam accusationem fecerit.

314. § 1. Adultery on the part of one of the spouses, without breaking the bond, gives to the other spouse cause for separation, even forever, unless he has himself consented to the crime, or been responsible for it, or has condoned it expressly or tacitly, or committed the same crime.

§ 2. There is tacit condonation when the innocent spouse, knowing the adultery, has freely continued to treat the guilty one with marital affection; condonation is presumed when the adulterous party has not, within six months, been sent away, or left, or duly denounced.

1. Adultery, being directly contrary to conjugal fidelity, is, of its nature, a cause for perpetual separation and the only one really special and intrinsic to marriage. (Gasparri, n. 1111.) Hence, it is the only one mentioned in the Gospel. (Matt. v, 19.) In the first centuries of the Church, there was

often a command, and the duty was imposed upon the innocent party, to separate from the party guilty of adultery. Even at present the dismissal of the guilty party might become a duty, if continued living with an adulterous husband and wife would seem to be an approval of the crime. Ordinarily no such obligation exists.

315. 2. To be a cause for separation, adultery must be formal, complete, morally certain; not attributable to the other party, partially or as accomplice, directly or indirectly; not compensated, as it were, by the adultery of the other party; not condoned tacitly or presumably. All sexual intercourse outside of married life is commonly assimilated to adultery, even the unnatural sin of sodomy.

3. The continuation of married life after acquiring the certainty that the other party has committed adultery, if it is really free, implies condonation of the crime; and it is specified here that after six months condonation is presumed.

3.° TAKING BACK THE GUILTY PARTY

Can. 1130. Conjux innocens, sive judicis sententia sive propria auctoritate legitime discesserit, nulla unquam obligatione tenetur conjugem adulterum rursus admittendi ad vitae consortium; potest autem eundem admittere aut revocare, nisi ex ipsius consensu ille statum matrimonio contrarium susceperit.

316. After a legitimate separation, whether effected by private authority or by a sentence of the judge, the innocent spouse is never obliged to admit again to married life the party guilty of adultery; he may, however, admit or recall her, unless, with the consent of the innocent spouse, the guilty one has embraced a state incompatible with matrimony.

1. Adultery is of itself a cause for perpetual separation; the innocent party has no further obligations to the guilty one, at least no obligations of justice. At times, charity might demand that after amendment the contrite party be taken back; perhaps in some exceptional cases reasons of common good might impose the same obligation.

317. 2. Canonists generally taught that if the innocent party would become adulterous in turn he would lose his privileges and be bound to take back the other one when the separation had been effected by private authority. If there had been an intervention of the judge, a new decision would be required to render cohabitation obligatory again. This canon states absolutely that the innocent party is free forever. Still, the principle of compensation is admitted in canon 1129, § 1.

3. The innocent spouse retains the right to demand the return of the guilty one unless he has given up his right by granting permission to the other party to enter a state incompatible with matrimony, and that permission has been taken advantage of. This last condition is now certainly necessary. If the innocent spouse refuses reconciliation, if within two years he does not invite the other one to return, if he receives Orders or embraces the religious life

permanently, he is supposed to give up his rights and leave the other party free to assume obligations which would render restoration of conjugal relations impossible. (Gasparri, n. 1114.)

4.° OTHER CAUSES FOR SEPARATION

Can. 1131. § 1. Si alter conjux sectae acatholicae nomen dederit; si prolem acatholice educaverit; si vitam criminosam et ignominiosam ducat; si grave seu animae seu corporis periculum alteri facessat; si saevitiis vitam communem nimis difficilem reddat, haec aliaque id genus, sunt pro altero conjuge totidem legitimae causae discedendi, auctoritate Ordinarii loci, et etiam propria auctoritate, si de eis certo constet, et periculum sit in mora.

§ 2. In omnibus his casibus, causa separationis cessante, vitae consuetudo restauranda est; sed si separatio ab Ordinario pronuntiata fuerit ad certum incertumve tempus, conjux innocens ad id non obligatur, nisi ex decreto Ordinarii vel exacto tempore.

318. § 1. If one of the married parties becomes affiliated with a non-Catholic sect; if he gives to the children an education which is not Catholic; if he leads a criminal and disgraceful life; if he is a grave danger to the other party's soul or body; if his cruelty renders common life too hard; such and similar causes will give the other spouse the right to withdraw by appealing to the Ordinary of the place; or even of his own authority if they are proved with certainty and there is danger in delay.

§ 2. In all these cases, when the cause for separation ceases, the married life ought to be resumed; but if the separation has been pronounced by the Ordinary for a definite or indefinite period of time, that obligation is not binding on the innocent party until it has been so declared by the judge or the time expires.

319. 1. There are other causes for separation besides adultery. The principal ones are mentioned here, by way of example, but not of complete enumeration: *(a)* Heresy, so often called spiritual adultery, is naturally the first one. To it is assimilated apostasy or schism. The present law demands more than a single act even of public heresy; it is joining a non-Catholic sect that constitutes the cause for separation. Apostasy, indifferentism, affiliation to a condemned society are not mentioned; nor heresy or infidelity anterior to the marriage. *(b)* It is not every neglect of duty to the children, but giving them an education which is not Catholic, that the law specifies as a cause for separation. *(c)* Great crimes were generally not considered by canonists as a sufficient cause, but they are mentioned explicitly here. (Lehmkuhl; Catholic Encyclopedia, Divorce, p. 64.) *(d)* Danger to soul or body must be a really grave one, which can not be avoided otherwise than by separation. Such would be "temptation to mortal sin, to the denial of the Faith, to the abuse of the marriage rights . . . ; danger to the body means any great danger to life or health, as well as other intolerable conditions, plotting against one's life, well-grounded fear of dangerous contagion, insanity, serious and constant quarreling," etc. (Gasparri, n. 1117.)

320. 2. In all those and similar cases recourse must be had to the Ordinary that he may pronounce the separation, unless the cause be proved with certainty and there be danger in delay. Heresy, even when clearly proved, is no exception to this rule, as was held by some canonists. (The Third Plenary Council of Baltimore, n. 126, forbids having recourse to the civil courts without consulting the Ordinary. A regular trial is not required, but only the Bishop's permission, where such custom exists.—Tanquerey, De Matrimonio, n. 937.)

Separation in the cases now under consideration is only temporary and lasts as long as the cause lasts. It may become perpetual *de facto* if the cause lasts as long as the life of the parties. May it be made perpetual antecedently also by reason of circumstances, so that the innocent party would be free, *v.g.,* to enter a Religious Order? Canonists answered that it might, in several cases, under certain conditions. The present canon does not mention any such case. In this, separation for one of the causes mentioned here differs from separation because of adultery; it differs also in another respect, that ordinarily it ought not to be effected by private authority, whilst in case of adultery the intervention of the Ordinary is not explicitly required.

5.° EDUCATION OF CHILDREN

Can. 1132. Instituta separatione, filii educandi sunt penes conjugem innocentem, et si alter conjugum sit acatholicus, penes conjugem catholicum, nisi in utroque casu Ordinarius pro ipsorum filiorum bono, salva semper eorundem catholica educatione, aliud decreverit.

321. After the separation, the education of the children belongs to the innocent spouse; if one of the parties is a non-Catholic, it belongs to the Catholic; unless in either case, for the good of the children and their Catholic education being duly provided for, the Ordinary decides otherwise.

322. 1. The innocent spouse ought regularly to be favored, unless he be a non-Catholic. In the latter case the Catholic party has the preference because of his faith and also because the education of the children will, as a rule, be safer in his hands. The good of the children is what should be considered primarily and, first of all, the safety of their faith. The judge may give the children to the non-Catholic parent if he deems it to their advantage, but he has always to see that they receive a good Catholic education.

323. 2. In the preceding canons it is always question of the Ordinary, for matrimonial causes among Christians are reserved exclusively to the ecclesiastical authority. From a moral standpoint it may, however, be permitted, at times, for a Catholic to apply to the civil court for corporal separation under certain conditions. (De Smet, n. 211.)

3. It is question not of the judge, but of the Ordinary, which implies that those matters are not necessarily decided in court after a regular trial; it may be lawful, for serious reasons, or where the custom exists, to proceed extra-judicially and be satisfied with an informal decision of the Ordinary.

CHAPTER XI

REVALIDATION OF MARRIAGE

ARTICLE I

SIMPLE REVALIDATION

1.° GENERAL CONDITIONS

Can. 1133. § 1. Ad convalidandum matrimonium irritum ob impedimentum dirimens, requiritur ut cesset vel dispensetur impedimentum et consensum renovet saltem pars impedimenti conscia.

§ 2. Haec renovatio jure ecclesiastico requiritur ad validitatem, etiamsi initio utraque pars consensum praestiterit nec postea revocaverit.

324. § 1. To revalidate a marriage, null because of a diriment impediment, it is necessary that the impediment cease or be dispensed from, and that the marriage consent be renewed by the party at least who knows of the impediment.

§ 2. This renewal is demanded by the ecclesiastical law for the validity, even if the parties gave their consent in the beginning and never withdrew it.

1. Some impediments cease of themselves, like age; others can be removed by the parties concerned, like disparity of worship; others can be removed only by dispensation. The cessation of the impediment is necessary for revalidation, but not sufficient. The

consent has to be renewed not only when it was wanting in the beginning, but in all cases of simple revalidation.

2. In itself that renewal would not be necessary, but it is demanded by the ecclesiastical law, as is explicitly declared here; only it is no longer necessary in all cases that it be renewed by both parties if the impediment is known to only one of them.

2.° RENEWAL OF THE CONSENT

Can. 1134. Renovatio consensus debet esse novus voluntatis actus in matrimonium quod constet ab initio nullum fuisse.

325. The renewal of the consent must be a new act of the will ratifying a marriage known to have been null from the beginning.

That the consent is renewed means that a new consent, independent of the first one, is given; and this supposes knowledge of the nullity of the first. As long as the parties do not know that their marriage is invalid, there is only continuance of the same consent. Peaceful cohabitation and marriage relations for years after the disappearance of the impediment do not validate the marriage, unless at least one of the parties is aware of the defect in the first contract.

3.° MODE OF RENEWAL

Can. 1135. § 1. Si impedimentum sit publicum, consensus ab utraque parte renovandus est forma jure praescripta.

§ 2. Si sit occultum et utrique parti notum, satis est ut consensus ab utraque parte renovetur privatim et secreto.

§ 3. Si sit occultum et uni parti ignotum, satis est ut sola pars impedimenti conscia consensum privatim et secreto renovet, dummodo altera in consensu praestito perseveret.

326. § 1. If the impediment is public, the consent must be renewed by both parties in the form prescribed by law.

§ 2. If the impediment is occult and known to both parties, it is enough that the consent be renewed by both parties privately and in secret.

§ 3. If the impediment is occult and known to only one of the parties, it is enough that the party who is conscious of the impediment should renew his consent, provided the other party's consent perseveres.

1. When the impediment is public, the marriage is non-existent in the external forum, consequently it ought to be celebrated with the usual formalities in presence of the priest and two witnesses.

327. 2. When the impediment is occult in fact and by its nature, before the public the marriage is valid, and therefore there is no need of celebrating it publicly. Renewal of the consent privately without witnesses, although always externally, will suffice.

3. If the occult impediment is known to both parties, both have to renew the consent; if to only one, it will be enough that this one renew the con-

sent privately and secretly. There is no obligation any more, in that case, to reveal the impediment to the other party and obtain his renewal, which often may offer real difficulties. To overcome them, canonists had been obliged to suggest various expedients which will gladly be dispensed with. The law can declare the renewal of consent by the party unconscious of the impediment unnecessary, since no renewal is, in itself, essential.

4.° MARRIAGE NULL FOR WANT OF CONSENT

Can. 1136. § 1. Matrimonium irritum ob defectum consensus convalidatur, si pars quae non consenserat, jam consentiat, dummodo consensus ab altera parte praestitus perseveret.

§ 2. Si defectus consensus fuerit mere internus, satis est ut pars quae non consenserat, interius consentiat.

§ 3. Si fuerit etiam externus, necesse est consensum etiam exterius manifestare, vel forma jure praescripta, si defectus fuerit publicus, vel alio modo privato et secreto, si fuerit occultus.

328. § 1. Marriage null for want of consent is validated, if the party who had not consented does consent, provided that the consent given by the other party perseveres.

§ 2. If the want of consent was merely internal, it is enough that the party who did not give his consent give it now interiorly.

§ 3. If the want of consent was external also, it is necessary to give the consent internally and to manifest it also externally; in the form prescribed by law, if the want of consent was public; or, if it was external, but occult, in some other private and secret manner.

1. When marriage is null for want of consent, no dispensation is needed or possible, the only remedy is that the consent which is wanting be given. The one given before has not to be renewed, provided it was not withdrawn; the Church does not demand that renewal, and it is not in itself necessary. There is no question in this case of renewal of consent by both parties, but of the giving of consent by the one who did not give it before. Is it necessary that the party now giving consent should know that the previous one was null or that the marriage was invalid? Here we have not a renewal; the consent now given will necessarily be new. To revalidate a marriage null because of fear, knowledge of the nullity is required. (A. A. S., vol. iv, Jan. 11, 1912, p. 188, Causa Osnabru.; vol. v, March 1, 1913, p. 322, Ebora; Gennari-Boudinhon, Consultation 119; Wernz, n. 648; De Smet, n. 408.) But a marriage null for want of consent is not considered here as null because of an impediment; when it is null because of fear it is null because of want of consent and also at least probably because of an ecclesiastical impediment.

329. 2. The consent has to be supplied as far as it is wanting; if the want is purely internal, the remedy does not need to be public, it suffices that the consent be given internally and it is implied in the spontaneous continuation of married life.

3. If the want of consent is publicly known, the giving of the consent ought to be public; that is, take place at least in presence of the priest and two witnesses. At times, to remove scandal, it may be necessary that it be public in that sense that it be made commonly known, but this is never required for the validity. If the want of consent would be external, but still occult, as, if it had been manifested in presence of only one witness or none at all, the consent would have to be given externally, but there would be no obligation of using the canonical public form; it might be given privately. Continuation of married life is an external manifestation of consent.

5.° MARRIAGE NULL FOR THE WANT OF THE REQUIRED FORM

Can. 1137. Matrimonium nullum ob defectum formae, ut validum fiat, contrahi denuo debet legitima forma.

330. Marriage null for want of form, to become valid, must be contracted again in the prescribed form.

Regularly there is no dispensation from the formalities prescribed for the valid celebration of marriage; if they have been omitted, the parties have only to go and renew their consent in presence of the priest and of two witnesses.

ARTICLE II

REVALIDATION *IN RADICE*

1.° ITS NATURE

Can. 1138. § 1. Matrimonii in radice sanatio est ejusdem convalidatio, secumferens, praeter dispensationem vel cessationem impedimenti, dispensationem a lege de renovando consensu, et retrotractionem, per fictionem juris, circa effectus canonicos, ad praeteritum.

§ 2. Convalidatio fit a momento concessionis gratiae; retrotractio vero intelligitur facta ad matrimonii initium, nisi aliud expresse caveatur.

§ 3. Dispensatio a lege de renovando consensu concedi etiam potest vel una tantum vel utraque parte inscia.

331. § 1. The revalidation of a marriage *in radice* is its revalidation, implying, besides a dispensation from, or the disappearance of, the impediment, the dispensation from the obligation of renewing the consent, and, by a fiction of law, retroaction as regards the canonical effects.

§ 2. The revalidation takes place when the favor is granted; the retroaction is understood to reach back to the beginning of the marriage, unless the contrary be stated.

§ 3. The dispensation from the obligation of renewing the consent may be granted without the knowledge of one or of either party.

1. The revalidation *in radice* differs from simple revalidation in two things—the renewal of the con-

sent is not required and, by a fiction of law, the marriage is considered as valid from the beginning, as far as its canonical effects are concerned. There is, then, as in a simple revalidation, a dispensation from the impediment which annulled the marriage, unless it has disappeared, and, moreover, a dispensation from the renewal of the consent, and a retroactive effect by which, *v.g.,* children born of that invalid marriage are considered legitimate as if the marriage had been contracted validly. The marriage itself, as is evident, and as is explicitly stated to avoid misunderstanding, becomes valid only from the moment the dispensation is granted, and the retroaction concerns only its canonical effects. The Church simply removes those disabilities which she had decreed, restoring, for instance, to illegitimate children the privileges enjoyed by those born of legitimate wedlock, and of which she had deprived them.

332. 2. By that fiction of law the marriage may be considered, in regard to its effects, as valid from the beginning or from a certain given moment. Regularly, it is in the first sense that the revalidation is to be understood.

3. The dispensation *in radice* may also be total or partial; it may have all its effects or only some. At times only one of the parties is dispensed from renewing the consent, as when one of the parties is willing to renew his, and the other is not or might not be if asked, although the consent previously given has not been withdrawn. The dispensation may also be granted to both parties without their knowing it. Ordinarily, at least one of the parties knows of the

dispensation and accepts it. Some indults grant the power of dispensing *in radice* only on that condition. Still it is not in itself necessary, nor required in some special cases when it would be difficult to comply with it, as when there would be a great many marriages to revalidate which were null through no fault of the parties.

The dispensation *in radice* may likewise be granted without any retroactive effects.

2.° WHEN IS IT POSSIBLE?

Can. 1139. § 1. Quodlibet matrimonium initum cum utriusque partis consensu naturaliter sufficiente, sed juridice inefficaci ob dirimens impedimentum juris ecclesiastici vel ob defectum legitimae formae, potest in radice sanari, dummodo consensus perseveret.

§ 2. Matrimonium vero contractum cum impedimento juris naturalis vel divini, etiamsi postea impedimentum cessaverit, Ecclesia non sanat in radice, ne a momento quidem cessationis impedimenti.

333. § 1. Any marriage contracted on both sides with a consent naturally sufficient but juridically ineffective because of a diriment impediment of the ecclesiastical law, or for want of the required form, can be revalidated *in radice,* provided the consent perseveres.

§ 2. But a marriage contracted with an impediment of the natural or divine law, even if the impediment afterwards disappears, the Church does not revalidate *in radice,* not even from the moment the impediment has ceased.

1. The Church can and does revalidate *in radice* marriages which were null only because of some ecclesiastical obstacle. The ecclesiastical authority can undo what it has done.

2. When a marriage is null by the natural or divine law the Church can not revalidate it as long as the cause of nullity continues. Once the cause of nullity has ceased, the Church could probably dispense *in radice,* the dispensation going back to the moment when the marriage became possible; but she does not. The effect of the dispensation could not go back to the beginning; that is, the Church could not treat as valid, even by a fiction of law, a marriage which is invalid by divine right. (De Smet, n. 408; Gennari, Consultationes morales, vol. ii, p. 385; Ami, Mai 17, 1906, p. 407; H. O., March 2, 1904; H. Pen., April 25, 1895.)

3.° WHEN IS IT IMPOSSIBLE?

Can. 1140. § 1. Si in utraque vel alterutra parte deficiat consensus, matrimonium nequit sanari in radice, sive consensus ab initio defuerit, sive ab initio praestitus, postea fuerit revocatus.

§ 2. Quod si consensus ab initio quidem defuerit, sed postea praestitus fuerit, sanatio concedi potest a momento praestiti consensus.

334. § 1. If the consent of one or both parties is wanting, the marriage cannot be revalidated *in radice,* whether the consent was wanting from the beginning, or whether it was given in the beginning and afterwards withdrawn.

§ 2. If the consent was wanting in the beginning, but given later, the revalidation can be granted from the moment the consent was given.

The marriage is really contracted and the sacrament received when the dispensation is granted; since the consent constitutes the essence of the contract, it is necessary and sufficient that it should exist at the moment the contract is made.

4.° BY WHOM IS IT GRANTED?

Can. 1141. Sanatio in radice concedi unice potest ab Apostolica Sede.

335. Revalidation *in radice* can be granted only by the Apostolic See.

The canons which deal with the Bishop's power of dispensing in cases of necessity or of danger of death must be understood of simple dispensations. To dispense *in radice* requires a special delegation from the Holy See.

CHAPTER XII

OF SECOND MARRIAGES

Can. 1142. Licet casta viduitas honorabilior sit, secundae tamen et ulteriores nuptiae validae et licitae sunt, firmo praescripto can. 1069, §2.

336. Although a chaste widowhood be more honorable, second and further marriages are valid and lawful, the prescriptions of can. 1069, § 2, being observed.

Can. 1143. Mulier cui semel benedictio sollemnis data sit, nequit in subsequentibus nuptiis eam iterum accipere.

A woman who has once received the solemn blessing can not receive it again in subsequent marriages.

337. 1°. The teaching of the Church in regard to second marriages has always been the same as that of St. Paul, who exhorts widows to remain unmarried, without imposing it as an obligation, rather advising marriage when the single life might be too dangerous. (Rom. vii, 2, 3; 1 Cor. vii, 39, 40; 1 Tim. v, 14; cf. Hermas, lib. ii, Mand. iv, n. 4; Tertullian, Ad uxorem, ii, 1.) The Montanists and Novatians, who absolutely forbade second marriages, were condemned. (Nice, c. 8.)

Those marriages, however, were looked upon with a disfavor, which was expressed by some ecclesiastical writers in such strong terms that at times they seem to amount to a formal condemnation. (Perrone, De Matrimonio Christiano, vol. iii, p. 73; Chardon, Histoire des Sacrements, Du Mariage, c. iv, art. 1; Martene, De antiquis Ecclesiæ ritibus, lib. i, c. ix, art 1.)

In the Greek Church, from the beginning of the fourth century, second marriages were subjected to various penances. (Neocæsarea, 314, c. 3, 7; Ancyra, 358, c. 19; Laodicea, 380 [?] c. 1; St. Basil, ad Amphilochium.) Third and fourth marriages were treated still more severely until they were condemned as unlawful or even as invalid except under certain conditions. This was done formally in the tenth century after the discussions to which the marriage of the emperor Leo VI gave rise. In the Latin Church they remained always lawful.

Some traces of the severer discipline are found in the penitential books of the West, but they had disappeared by the time Gratian compiled his Decretum. (C. xxxi, q. 1.)

338. 2°. As a sign of disfavor, in the Greek Church, the crowning and, in the Latin Church, the solemn nuptial blessing, were, at a very early date, refused to second marriages. Originally the blessing was denied whenever one of the parties had been married or had been blessed before. Then the practice was introduced in some countries of granting it when the bride had not received the blessing already; and the Roman Ritual permitted to retain that practice where it existed. A decree of the Holy Office, August 31, 1881, was interpreted by many as implying that it might, or even should, be adopted everywhere. The question is now settled by the present canon.

339. 3°. Under the ancient Roman law a widow was forbidden, under pain of infamy, to contract a new marriage before ten, or, by the law of Theodosius, twelve, months had elapsed since the death of the first husband. Similar provisions are found in the Frankish laws and in modern civil codes. They were adopted also by some ecclesiastical canons, but these were abrogated by Innocent III. (C. ult. x, iv, De Secundis Nuptiis.) It has only been recommended since, as it is by the present canon, to avoid overhasty marriages, which have something unbecoming even when they are not likely to give rise to unfavorable suspicions or to other difficulties. Pastors are directed to use their influence to prevent such unions, but not to forbid them. The Ordinary might, no doubt, in particular cases, prohibit them, for grave reasons. (Dictionnaire de Théologie Catholique, Bigamie; Esmein, vol. ii, p. 99.)

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